(16,550.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 346.

J. FRANCISCO CHAVEZ, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

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1 *Transcript of the Nerio Antonio Montoya Case.*

J. FRANCISCO CHAVEZ
vs.
UNITED STATES.

Tried at the March Term, 1896.

Counsel for plaintiff, F. W. Clancy.
For defendant, Matt. G. Reynolds, Esq., U. S. attorney, and Summers Burkhart, Esq., assistant U. S. attorney.

2 UNITED STATES OF AMERICA, *Territory of New Mexico,* } *ss.*:

Be it remembered that heretofore, to wit, on the sixteenth day of July, A. D. 1892, J. Francisco Chavez, by his attorney, F. W. Clancy, Esq., filed in the office of the clerk of the court of private land claims a petition, in which said J. Francisco Chavez is plaintiff and The United States of America is defendant; which said petition is in the words and figures following, to wit:

3 UNITED STATES OF AMERICA, *ss.*:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

J. FRANCISCO CHAVEZ
vs.
THE UNITED STATES.

To the honorable chief justice and associate justices of said court:

Your petitioner, J. Francisco Chavez, a resident of the county of Valencia and Territory of New Mexico, brings this his petition against the United States of America and shows to the court the following:

1. On the 28th day of February, 1831, Nerio Antonio Montoya, then a resident of the place called Valencia, addressed a petition to the ayuntamiento of the town of Tome, asking that body to make a report to the territorial deputation recommending that he be placed in possession of a tract of land about half a league in area and distant about one league from the Manzano grant, and on the 19th of March, 1831, the ayuntamiento of Tome recommended to the territorial deputation that the donation of the land prayed for should be made, and on the 12th day of November, 1831, the territorial deputation of New Mexico, with the consent and participation of the governor and political chief of said Territory, granted the land prayed for by said Montoya and asked the alcalde of the proper jurisdiction to execute the proper document to secure to the
4 grantee the land granted. On the 7th of December, 1831, Miguel de Olona, alcalde of the jurisdiction of Tome, exe-

cuted a document showing the presentation to the ayuntamiento of Tome of the order of the territorial deputation and expressing his readiness to put the grantee in possession as soon as the grantee should notify him to do so, and on the 12th day of December, 1831, the said alcalde delivered possession of the land to the grantee and executed an act of juridical possession. Copies and translations of said petition, report, document, act of possession, and of a certificate by the secretary of the territorial deputation as to the decree of that body are filed herewith in duplicate as parts of Exhibits A and B, the original of said act of possession and copies of said other papers being on file in the office of the surveyor general for New Mexico as part of the files of private land claim No. 51. A copy and translation of said decree of the territorial deputation are filed herewith as Exhibit C in duplicate, the original thereof being on file in the office of said surveyor general.

2. The said grantee, Nerio Antonio Montoya, after having received possession of said land as aforesaid, remained in possession thereof, as your petitioner is informed and believes, up to the time of the occupation of New Mexico by the military forces of the United States, in 1846.

3. On the 2nd day of October, 1848, the said grantee, Nerio Antonio Montoya, executed before Fernando Aragon, alcalde, a conveyance of the said grant to Juan Perea and his sister, Dolores Perea, a copy and translation of said conveyance being filed herewith in duplicate as part of Exhibits A and B, the original thereof being on file in the office of the surveyor general of New Mexico as part of the files of private land claim No. 51.

4. This petitioner has acquired by purchase from the said Dolores Perea and Juan Perea, respectively his mother and uncle, all of their title and interest in the said land, and he avers that he has succeeded to all of the rights of said original grantee, Nerio Antonio Montoya.

5. The said grant is situate in the county of Valencia and Territory of New Mexico, east of the Manzano mountains and near the confirmed grant of the town of Torreon, is bounded on the east by the Apache rancheria, on the west by the Central spring (ojo de en medio), on the north by the highest part of the mountain ridge of the same cañon in which the spring is situated, and on the south to the beginning of the little valley of the Cuerbo and as far as the spring situated therein commonly called the Ojo del Cuerbo, and contains, according to the survey made under the direction of the surveyor general for New Mexico, 3,546.06 acres. A map is filed herewith, showing the same as near as may be, marked Exhibit D.

6. The claim for said grant was submitted to the United States surveyor general for New Mexico by your petitioner in 1871 under the provisions of the act of Congress of July 22nd, 1854, and was by that officer on the 20th of June, 1871, approved and the papers in the case transmitted for the action of the Congress of the United States, but so far as this petitioner is informed Congress has taken no action with regard to said claim. On the 8th day of May,

1886, the then surveyor general for the Territory of New
6 Mexico, Mr. George W. Julian, undertook to make what is called a supplementary report in the matter of said claim and recommended that the claim be rejected by Congress, but so far as this petitioner is informed no action has ever been taken by Congress upon said supplementary report. This petitioner avers that no opportunity was given him for any hearing before said Julian, and that the said adverse report is based upon assumptions and statements of fact which are without foundation and truth.

This petitioner therefore prays that the validity of his title to the said grant may be inquired into and decided by this court, and that the same may be confirmed to him or to the heirs and legal representatives of said original grantee, Nerio Antonio Montoya.

J. FRANCISCO CHAVEZ, *Petitioner*,
By F. W. CLANCY, *His Solicitor*.

7 (EXHIBIT A.)

Muy Ylustre Ayuntamto, de Tome:

El c. Nerio Antonio Montoya, vecino del puesto de Valencia, ante V. S., con el mas profundo respecto, paresco y digo: Que hallan dome en dicho puesto de Valencia reducido solamente a la rama que corresponde a mi esposa sin saber qual pueda tocarle por estar el referido sitio encomunado y sin esperansas de que aunque sea repartido haya de tocarme une parte concederable, conque pueda acudir a la precisa subsistencia de una crecida familia que me rodea, respecto de ser corto y muchos los poseidores vajo esta su posicion, me veo en la imperiosa nesecidad de manifestarlo a V. S. para que tenga la dignacion de tomar en consideracion esta mi situacion, y por un efecto de su notoria bondad tenerla igualmte. de poner a continuacion su informe a la Exma. Diputacion para que S. E. en vista de este y de lo que expongo pueda dictaminar, si lo tuviere a bien, el que se me posecione desde el ojo de en medio hasta la rancheria que den para el ambito, como de media legua, por todo el cañon, distante una de la merced del Manzano, cullo sitio baldio y a mi concepto sin perjuicio de los havitantes de la comprehencion de esta jurisdicion, por lo que respecta a pasteos y aguas de sus ganados, causa la incomodidad del cañon en que se haya el mencionado sitio, y la cantidad de agua que encierra; y util solamente a una certa siembra a la que unicamente me intereso, y de la que lla brifique el ano passado, la que sin embargo de no aberla podido acistir completamente por la larga distancia, no dejo de aleviarme su corto producto. Por todo lo cual a V. S., humilde y sumicamte, pido y suplico sea muy servido de hacer como solicito; que en ello recivire gracia y justicia. Juro no proceder de malicia y en lo necesario, &c. Ba en este papel comun por no haver en esta jurisdicion del sello que corresponde. Quedando con obligacion de agregar el aspiado.

NERIO ANTO. MONTOLLA.

Valencia, Febrero, 28 de 1831.

8 *Ynforme del Alluntamiento.*

Tome, Marzo 19 de 1831.—Convencido este r. alluntamiento de las poderosas razones que el suplicante ce pone, y el ningun perjuicio que resulta, antes si bastante beneficio al interes y aumento de la agricultura, pone su ynstancia a la exma. diputacion territorial quien como facultada pueda acceder a la donacion del terreno que pide dho. suplicante, sin perjuicio de pastos y abrebaderos para los trancetantes.

JUAN BACA.

MIGUEL DE OLONA,
Rejidor Secretario.

Decreto de la Exma. Diputacion (*Quaderno* 1, *Fo.* 2).

SANTA FÉ, 12 *Nove. de* 1831.

Su E. la diputacion de este terro., instruido del ynforme que a continuacion de esta ynstancia da el alluntamto. constitucional de Tome, ha resuelto en secion de hoy se done el terreno que solicita el impetrante, preveniendo al alc'e. de dha. jurisdicion forme el correspondente documento que asegure al agraciado en la merced que por este se le concede.

ABREU, *Secreto.*

Documto. del Alce.

El. c. Miguel de Olona, segundo rejidor de esta r. alluntamto de Tomey alcalde actual de la misma jurisdicion &a: En cumplimiento de lo decretado por la exma. diputacion de este terro., con f'ha 12 de Nbre del ano corriente al margen de la instancia que, con f'ha 28 de Febrero, presento a este r. alluntamto el c. Nerio Antonio Montoya, vecino de esta misma jurisdicion, en culla instancia consta el ynforme queda esta alluntamto. por el qual a benido S. E. en agraciar con su solicita en la banda opuesta de la sierra que es el ojo de en medio, y desde este hasta la rancheria que es la
9 solicitud de el agraciado, y para que le sirba de titulo y a cer constar su propiedad en el espresado terreno, yo el nominado alcalde, co arreglo a lo dispuesto por S. E. y por la facultad que me es conferida por la ley, estiendo el presente documento actuando con testigos de asistencia por falta de todo escribano, que no la hay segun derecho, en este papel comun por la notario falta del sellado; quedando obligado el agraciado a agregar el del sello que corresponde, quedando a el mismo tiempo en este archivo la instancia original de Montoya, como tambien puede el espresado Montoya el dia que guste y tenga abien avisarme para pasar con el a posecionarle en la propiedad que se le concede con todas las formalidades que son de estilo para que con libre poderio pueda gozar por si, sus hijos y susesores el terreno que en nombre de la soverania se le consede; y para toda constancia lo firme y otorgue en siete dias del mes de Dbre. de 1831, con los de mi asistencia, como es dicho; de que doy fee.

MIGUEL DE OLONA.

Asa.: ISIDORO SAMORA.
Asa.: ANTONIO BARELA.

Posesion.

En doce dias del mes de Dbre. de 1831, 110, el segundo rigidor de es te r. alluntamiento y alcalde actual de esta jurisdicion de Tome, en vista de lo prevenido por la exma. diputacion de este terro. y con el aviso que tuve del c. Nerio Antonio Montoya, pase con el al sitio que se le dona, y estando en el y no resultando perjuicio alguno le senale al espresado Montoya los linderos siguientes: por el oriente la rancheria que llaman de los apaches; por el poniente el ojo de en medio; por el norte lo alto del monte de la cuchilla del cañon mismo a donde esta el ojo, y por el sur el nacimiento de la Canada del Cuervo hasta un ojo que esta en la misma Canada que comunmente llaman el Ojo del Cuervoy; le adverto las condiciones espresas en el ynforme en cuanto a pastos y abrevaderos para los tansitantes, mandandole al mismo tiempo poner seis mojoneras firmes y sitables y entendido de todo lo coji de la mano y lo pasie por dicho terreno, arranco sacate, tiro piedras a los cuatro bientos, gritando por una y tres veces, biba la Soverania, en senal de berdadera posesion pacifica sin contradicion. Y para que asi conste lo firme yo dicho regidor y alcalde actual, con los de mi asistencia; como dicho es; de que doy fee.

MIGUEL DE OLONA.

Assa.: JUAN JOSE DE MADARIAGA.
Assa.: ANTO. BARELA.

En los Corrales, condado de Bernalillo a los dos dias del mes de Octubre de 1848, ante mi Fernando Aragon, Aloe. del mencionado condado, comparecieron Dn. Nerio M-ntoya, vico. del condado de Balencia y Dn. Juan Perea vecino de Bernalillo, y estando presentes dijo el primero qe. traspasa todo su derecho y poderio de este documento en el mencionado Perea y su hermana Dna. D-lores Perea pa qe. desde luego queden estos senores hasiendo el lugal huso de este derecho como propios ullo qe. es con mas juna huerta con cuatro cientos setenta y cuatro matas de huba; tres piesas de abitacion de palo; ochenta y seis arboles frutales de durazno y manzana; la tapia qe. resguarda la huerta con dro de q. si se derrota pueden fomentala de sus estramuros; tambien el documento y dro. de la acequia con qu le riega dha huerta; diez y nueve frascos aguardiente; una aucion qu tiene comprada a Manl. Sedillo en el sitio de las Peraltas, los tres cuartos mencionados los da con el solar y choreras correspondientes, y dice el otorgante qe todo le presente en este documento lo escede a estos senores por la cantidad de cuatro mil quinientos ochenta una cabezas de ganado menor de qe les era deudor y otros picos qe por efectos de tienda tambien debia; con cuya cantidad se an dado por pagados y satisfechos de la mencionada cantidad. Aci lo han otorgado por auto y certifico el presente, con los testigos de acist'a; de todo doy fee.

FERNANDO ARAGON, *Alcalde.*
NERIO ANO. MONTOYA.

Acista.: MARIO S. VERGARA.
De. acissta: JUAN VIGIL.

11 GEFATA, POLITICA DE NUEVO MEJICO.

Por el oficio de V. f ha beinte del corriente me he impuesto haver V. cumplido con el decreto de la exma. diputacion en que poseciona de un terreno al C. Nerio Antonio Montoya y pero con respecto a la consulta que V. me hase sobre cuantos deben de ser sus deros. digo que lo ignoro, y que puede V. si acaso gusta dirijir esa consulta al Sor. Azesor quees el que en tales casos deve consultar a los jueces de 1ra Instancia.

Dios y la libertad, Santa Fé, 22 de Decre de 1831.

JOSE ANTONIO CHAVEZ.

Sor. Regidor D. Miguel Alona.

12 (EXHIBIT B.)

To the honorable the corporation of Tome:

I, citizen Nerio Antonio Montoya, resident of the town of Valencia, appear with the greatest respect before your honorable body and state that, finding myself at the said place, Valencia, limited only to that portion that belongs to my wife, not knowing what share is hers for the reason that the said tract is owned in common, and having no hope that even it it is divided up a sufficient amount will come to me on which to depend for the support of a large family, by which I am surrounded, the land being small in quantity and the holders being numerous, under this apprehension I find myself under the imperious necessity of applying to your honorable body that you be pleased to take this my situation in consideration, and that, actuated by your well-known generosity, you may further manifest the same by appending hereto your report to the most excellent deputation so that that body, in view thereof and of what I myself represent, may, should it deem proper to do so, direct that I be placed in possession from the Central spring to the rancheria, about half a league in extent along the cañon and distant about one league from the Manzazo grant, which tract is uncultivated, and in my opinion the grant would not be injurious to the inhabitants within this jurisdiction in regard to pasturing and water for their live stock, owing to the unsuitableness of the cañon in which the said tract lies and the small quantity of water it contains, and it is valuable only for cultivation on a small scale, for which purpose only I desire it, I having planted there last year, and the crop, though I could not tend it well, owing to the great distance, did not fail to relieve me with its limited production; for all which reasons I humbly and submissively ask and pray your honorable body to be pleased to do for me as I request, for I shall thereby receive favor and justice. I declare not to act in dissimulation and whatever is necessary, &c.

This is written on this common paper, there being no paper of the proper stamp in this jurisdiction, I remaining under the
13 obligation of attaching thereto the cancelled one.

Valencia, February 28, 1831.

NERIO ANTONIO MONTOLLA.

Report of the Corporation Council.

TOME, *March* 19, 1831.

This honorable council being convinced by the strong reasons set forth by the petitioner, and no injury resulting, but rather considerable advantage, to the interests and encouragement of agriculture, his petition will go before the most excellent territorial deputation, which, as the authority competent, may accede to the donation of the land prayed for by the said petitioner without injuring the pastures and watering places for the passers-by.

JUAN BACA.

MIGUEL DE OLONA,
Member and Secretary.

Decree of the Most Excellent Deputation, Book 1, *Folio* 2.

SANTA FÉ, *November* 12, 1831.

The honorable the deputation of this Territory, having received the report of the constitutional council of Tome, appended to this petition, has resolved in this day's session to grant the land prayed for by the petitioner, charging the alcalde of said jurisdiction to execute the document that will secure the grantee in the grant hereby made to him.

ABREU, *Secretary.*

Alcalde's Document.

The citizen Miguel de Olona, second alderman of this honorable council of Tome and present alcalde of the same jurisdiction, &c.

In obedience to the decree of the most excellent deputation of this Territory made under date of November 12th of the current
14 year on the margin of the petition which, under date of February 28, the citizen Nerio Antonio Montoya, resident of this said jurisdiction, presented to this honorable council, and on which petition is recorded the report made by this council, in accordance with which report its excellency has deemed it proper to accede to the petition of Montoya, granting him full and formal possession of the tract he prayed for on the opposite side of the mountain at the Central spring and from the latter to the rancheria, which is according to the petition of the grantee, and in order that it may serve him as a title to and secure to him as his own property the said land, I, the said alcalde, in pursuance of the order of its excellency and by virtue of the power conferred on me by law, do execute to him this document, acting with attending witnesses for want of a notary, there being none such as the law requires, and on this common paper on account of the well-known lack of stamped paper, the grantee standing obligated to attach the proper revenue stamp, Montoya's original petition remaining in the meantime among the archives of this office, and the said Montoya, whenever he may choose or think best to do, may notify me to proceed with

him to the locality to place him in possession of the property granted him, with all the customary formality, to the end that with full control he may enjoy for himself, his children and successors, the land which in the name of the nation is granted to him.

And for full security I signed and executed this on the seventh day of the month of December, one thousand eight hundred and thirty-one, with my attending witnesses as aforesaid; to all of which I certify.

MIGUEL DE OLONA.

Attending: ISIDRO SAMORA.
Attending: ANTONIO BARELA.

Possession.

On the twelfth day of the month of December, one thousand eight hundred and thirty-one, I, second alderman of this
15 honorable council and present alcalde of this jurisdiction of Tome, in compliance with the provision made by this most excellent deputation of this Territory and the notification given me by the citizen Nerio Antonio Montoya, proceeding with him to the tract of land granted to him and standing thereupon, and no injury whatever resulting, I designated to the said Montoya the following boundaries: on the east, the so-called Apache rancheria; on the west, the Central spring; on the north, the mountain summit of the ridge of the said cañon, the same at which the spring is situated, and on the south, the commencement of the Canada del Cuervo up to a spring situated therein, commonly called the Cubero (Cuerbo) spring, and I notified him of the conditions expressed in the report relative to pastures and watering places for the use of passers-by, directing him at the same time to establish firm and permanent landmarks, and in confirmation of the whole I took him by the hand and led him over said land and plucked up grass, cast stones toward the four cardinal points, shouting aloud ("Blessed be the nation") once and thrice in sign of true, peaceable, and unopposed possession.

And that it may so appear I, said alderman and present alcalde, signed this document with my attending witnesses as aforesaid; to which I certify.

MIGUEL DE OLONA.

Attending: JUAN JOSIE DE MADRIAGA.
Attending: ANTONIO BARELA.

At Corrales, county of Bernalillo, on the 2nd day of the month of October, 1845, before me, Fernando Aragon, alcalde of the said county, appeared Nerio Montoya, resident of the county of Valencia, and Juan Perea, resident of Bernalillo, and, both being present, the former declared that he conveys all the right and power in this document to the said Perea and his sister, Dolores Perea, to *to* the end that henceforth they may be the proprietors thereof,
16 making legal use of this title as their own property, which it is, together with a (lot of land) (huerta) containing four

hundred and seventy-four grapevines, three rooms, built of wood, for dwellings, eighty-six peach and apple fruit trees, and the wall surrounding the grape patch, with the privilege that should it fall down they may rebuild it from the adjoining ground; also the document and right to the acequia irrigating said patch, nineteen jars (frascos) of brandy, a land claim (aucion) the vendor has purchased from Manuel Sedillo at the place Las Peraltas, and the three rooms aforesaid he conveys, together with the lot and the eaves drippings (chorreras) belonging thereto, and the vendor declares that all that is mentioned in this instrument he conveys (esede) to the said vendees (for four thousand five hundred and eighty-one head of sheep and goats (ganado menor), for which, as well also as for some merchandise, he was in debt to them), for which property (cantidad) the said vendees acknowledge themselves paid and satisfied the said indebtedness.

Thus have the parties contracted before (me), and I certify thereto with attending witnesses; to all of which I certify.

FERNANDO ARAGON, *Alcalde.*
NERIO ANTONIO MONTOYA.

Attending: MARCOS S. VERGARA.
Attending: JUAN BIJIL.

OFFICE OF THE POLITICAL CHIEF OF NEW MEXICO.

By your official communication of the 20th instant I am advised of your having executed the decree of the most excellent deputation granted to the citizen Nerio Antonio Montoya a tract of land.

But in regard to the inquiry you make of me, as to how much your fee should be, I inform you that I am ignorant in the premises, and that you may, if you choose to do so, put the question to the assessor (asesor), who is the officer to whom it belongs, to advise the justices of first instance in such cases.

God and liberty. Santa Fé, December 22nd, 1831.

JOSE ANTONIO CHAVEZ.

To Alderman Miguel Olona.

17 (EXHIBIT C.)

Extract from Record of Proceedings of the Territorial Deputation.

Secion del dia 12 de Novre. de 1831.

Leyda y aprovada la acta antecedente se dio cuenta con una instancia del C. Nerio Antonio Montoya, vesino de Valencia en que solicita se done para labor un citio yermo que hay en el Manzano; dentre de los limites del Ojo de en medio hasta la rancheria: y visto

el informe del R. Ayuntamiento de Tome donde se manifiesta no haver obstaculo para la consecion del dho terreno se mando donar.

* * * * * * *

Semlevanto la secion.

SANTIAGO ABREU, *Presidte.*	[RUBRICA.]
JUAN RAFAEL ORTIZ.	[RUBRICA.]
ANTO. JOSE MARTINEZ.	[RUBRICA.]
JUAN MANL. SALAZAR.	[RUBRICA.]
TEODOSIO QUINTANA.	[RUBRICA.]
RAMON ABREU, *Srio.*	[RUBRICA.]

Secion del dia 12 de Novre. de 1831 por la tarde.

Leyda y aprovada la acta anterior.

* * * * * * *

Se-levanto la secion.

SANTIAGO ABREU, *Presidte.*	[RUBRICA.]
JUAN RAFAEL ORTIZ.	[RUBRICA.]
ANTO. JOSE MARTINFZ.	[RUBRICA.]
JOSE MANL. SALAZAR.	[RUBRICA.]
TE-DOSIO QUINTANA.	[RUBRICA.]
RAMON ABREU, *Srio.*	[RUBRICA.]

18 (TRANSLATION OF EXHIBIT C.)

Extract from Record of Proceedings of the Territorial Deputation.

Session of November 12, 1831.

The foregoing rec-rd having been read and approved, a petition of citizen Nario Montoya, a resident of Valencia, in which he asks for the donation, for agricultural purposes, of a tract of vacant land in the Manzano within the limits of the Ojo de en Medio as far as the rancheria, was taken up and the report of the respectable corporation council of Tome, in which it is set forth that there is no objection to the concession of the said land, having been heard, it was ordered that it be granted.

* * * * * * *

The session was adjourned.

SANTIAGO ABREU, *President.*	[RUBRIC.]
JUAN RAFAEL ORTIZ.	[RUBRIC.]
ANTO. JOSE MARTINEZ.	[RUBRIC.]
JOSE MANL. SALAZAR.	[RUBRIC.]
TEODOSIO QUINTANA.	[RUBRIC.]
RAMON ABREU, *Secretary.*	[RUBRIC.]

Afternoon session of November 12, 1831.

The foregoing record having been read and approved.

* * * * * * *

The session was adjourned.

SANTIAGO ABREU, *President.* [RUBRIC.]
JUAN RAFAEL ORTIZ. [RUBRIC.]
ANTO. JOSE MARTINEZ. [RUBRIC.]
JOSE MANL. SALAZAR. [RUBRIC.]
TEODOSIO QUINTANA. [RUBRIC.]
RAMON ABREU, *Secretary.* [RUBRIC.]

19 And afterwards, to wit, on the nineteenth of November, 1892, there was filed in the said office of the said clerk the answer of the United States to the said petition; which answer was and is in the words and figures following, to wit:

20 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, November Term, 1892.

J. FRANCISCO CHAVEZ, Plaintiff,
vs.
THE UNITED STATES, Defendant. } 20.

Answer.

Cómes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the petition filed herein says:

It has no knowledge or information sufficient to enable it to form a belief as to whether, on the 28th day of February, 1831, Nerio Antonio Montoya petitioned the ayuntamiento of the town of Tome to recommend to the territorial deputation that he be placed in possession of a half a league of land near the Manzano grant, nor as to whether said ayuntamiento did, on the 19th day of March, 1831, recommend the donation of said land as prayed, nor as to whether said territorial deputation, on the 12th day of November, 1831, with the participation of the governor, did undertake to grant the land as prayed to said Montoya.

But it says, if Montoya was placed in possession of said land as alleged and received a grant as alleged, the same was without warrant or authority of law and void.

It says it has no knowledge or information as to whether, on the 12th day of December, 1831, one Miguel de Olona, alcalde of the jurisdiction of Tome, delivered possession of said property to said Montoya or not, but says that if said Olona placed said Montoya in possession of said property under and by direction of the departmental assembly the same was without warrant or authority of law and in nowise bound the Mexican government or imposed
21 any obligation upon it, and was therefore void.

It therefore says that no grant was ever made nor posses-

sion given to said Montoya by any one authorized by the laws of Mexico to dispose of its public domain.

It denies that the governor of said province participated in the deliberations of said assembly, and further says that if he did so it was only as an *ex officio* member and presiding officer thereof, and by said act, if he did so act, he imposed no obligations on his government by reason thereof as against the laws, rules, and regulations governing the disposition of the public domain.

It says it has no knowledge or information as to whether the plaintiff has succeeded in whole or in part to any interest or claim made by the alleged original grantee, Montoya.

All other allegations not hereinbefore answered are denied, and it is demanded that plaintiff be put to his proof of all the allegations in said petition, as provided he shall be by the act approved March 3rd, 1891, under which this court assumes jurisdiction of this controversy, and that the said plaintiff shall be put to his proof as to his pretended interest or supposed interest therein.

Now, having fully answered, it prays the court that a decree may be entered rejecting the confirmation of said alleged claim or grant, and for such other and further orders as may seem mete and that this court may be authorized to make in the premises.

Respectfully submitted.

MATT. G. REYNOLDS,
U. S. Attorney.

22 And afterwards, to wit, at a stated term of the court of private land claims begun and held at Santa Fé, New Mexico, on the fourteenth of May, A. D. 1895, and on the first day of September, the same day, being the fourteenth day of May, 1895, the following, among other, proceedings were had, to wit:

J. FRANCISCO CHAVEZ
vs.
THE UNITED STATES.

On motion of petitioners, by *their* attorney, F. W. Clancy, Esq., it is ordered by the court that this cause —, and the same is hereby, passed until some future day of the term.

23 And afterwards, to wit, on the fifth day of October, 1895, the said petitioner filed in the said office of said clerk his amended petition and the sketch map; which said amended petition and map were and are in the words and figures following, to wit:

24 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Sitting in the Territory of New Mexico, at the City of Santa Fé.

J. FRANCISCO CHAVEZ
vs.
THE UNITED STATES.

To the honorable chief justice and associate justices of said court:

Your petitioner, J. Francisco Chavez, a resident of the county of Valencia and Territory of New Mexico, brings this his amended petition against the United States of America and shows to the court the following:

1. On the 28th day of February, 1831, Nerio Antonio Montolla, then a resident of the place called Valencia, addressed a petition to the ayuntamiento of the town of Tome, asking that body to make a report to the territorial deputation recommending that he be placed in possession of a tract of land about half a league in area and distant about one league from the Manzano grant, and on the 19th of March, 1831, the ayuntamiento of Tome recommended to the territorial deputation that the donation of the land prayed for should be made, and on the 12th day of November, 1831, the territorial deputation of New Mexico, with the consent and participation of the acting governor and political chief of said Territory, granted the land prayed for by said Montoya and asked the alcalde of the proper jurisdiction to execute the proper document to secure to the
25 grantee the land granted. On the 7th of December, 1831, Miguel de Olona, alcalde of the jurisdiction of Tome, executed a document showing the presentation to the ayuntamiento of Tome of the order of the territorial deputation and expressing his readiness to put the grantee in possession as soon as the grantee should notify him to do so, and on the 12th day of December, 1831, the said alcalde delivered possession of the land granted to the grantee and executed an act of juridical possession. Copies and translations of said petition, report, decree, document, and act of possession are filed with the original petition herein in duplicate as parts of Exhibits "A" and "B," the originals thereof being on file in the office of the surveyor general of New Mexico as part of the files of private land claim number 51.

2. On the 22nd of December, 1831, the governor and political chief of New Mexico, in answer to a communication from said alcalde, Olona, shows that he was advised of Olona's having executed the decree of the deputation, a copy and translation of the governor's letter to Olona being filed with the original petition herein as part of Exhibits "A" and "B," the original thereof being on file in the office of the surveyor general of New Mexico as part of the files of private land claim No. 51.

3. The said grantee, Nerio Antonio Montoya, after having received possession of said land as aforesaid, remained in possession thereof, as your petitioner is informed and believes, up to the time of the

occupation of New Mexico by the military forces of the United States, in 1846.

4. On the 2nd day of October, 1848, the said grantee, Nerio Antonio Montoya, executed before Fernando Aragon, alcalde,
26 a conveyance of the said grant to Juan Perea and his sister, Dolores Perea, a copy and translation of said conveyance being filed with the original petition herein in duplicate as part of Exhibits "A" and "B," the original thereof being on file in the office of the surveyor general of New Mexico as part of the files of private land claim No. 51.

5. This petitioner has acquired by purchase from the said Dolores Perea and Juan Perea, respectively his mother and uncle, all of their title and interest in the said land, and he avers that he has succeeded to all of the rights of said original grantee, Nerio Antonio Montoya.

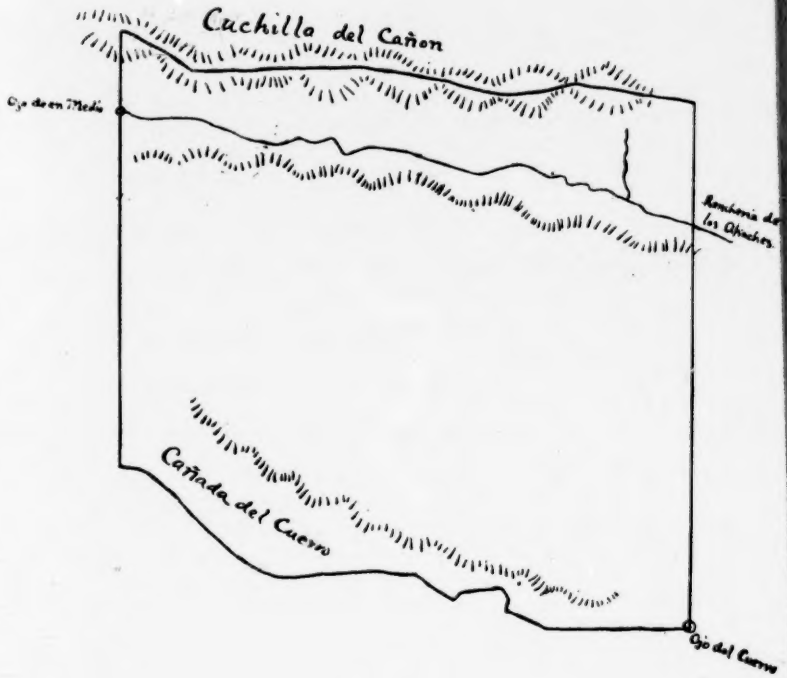
6. The said grant is situate in the county of Valencia and Territory of New Mexico, east of the Manzano mountains and near the confirmed grant of the town of Torreon, is bounded on the east by the Apache rancheria, on the west by the Central spring (Ojo de en Medio), on the north by the highest part of the mountain ridge of the same cañon in which the spring is situate, and on the south to the beginning of the little valley of the Cuerbo and as far as the spring situated therein commonly called the Ojo del Cuerbo, and contains about 5,000 acres. A map is filed herewith showing the same as near as may be.

(Here follows diagram marked p. 28.)

7. The claim for said grant was submitted to the United States surveyor general for New Mexico by your petitioner in 1871 under the provisions of the act of Congress of July 22nd, 1854, and was by that officer on the 20th of June, 1871, approved and the papers in the case transmitted for the action of the Congress of the
27 United States, but so far as this petitioner is informed Congress has taken no action with regard to said claim. On the 8th day of May, 1886, the then surveyor general of the Territory of New Mexico, Mr. George W. Julian, undertook to make what is called a supplementary report in the matter of said claim and recommended that the claim be rejected by Congress, but so far as this petitioner is informed no action has ever been taken by Congress upon said supplementary report. This petitioner avers that no opportunity was given him for any hearing before said Julian, and that the said adverse report is based upon assumptions and statements of fact which are without foundation and truth.

This petitioner therefore prays that the validity of his title to said grant may be inquired into and decided by this court, and that the same may be confirmed to him or to the heirs and legal representatives of said original grantee, Nerio Antonio Montoya.

J. FRANCISCO CHAVEZ, *Petitioner*,
By F. W. CLANCY, *His Solicitor*.



No 346.
Chaves } p28
N Mex.

Sketch Map
of the
Nerio Antonio Montoya Grant
Reported Claim No 51

Estimated Area, 5000 Acres.

29 And afterwards, to wit, at a stated term of said court begun and held at Santa Fé, New Mexico, on the seventh day of October, 1895, and on the first day of said term, the same being October seventh, 1895, the following, among other, proceedings were had, to wit:

J. FRANCISCO CHAVEZ
vs.
THE UNITED STATES.

The above-entitled cause now coming on to be heard was, upon motion of F. W. Clancy, Esq., attorney for plaintiff, passed.

30 And afterwards, to wit, on the eighteenth day of February, 1896, the said defendant filed its answer to said amended petition in the said office of said clerk; which said answer was and is in the words and figures following, to wit:

31 UNITED STATES OF AMERICA, *ss:*

In the Court of Private Land Claims, Santa Fé District, March Term, 1896.

J. FRANCISCO CHAVEZ, Plaintiff,
versus
THE UNITED STATES, Defendant. } No. 20.

Answer to Amended Petition.

Comes now the United States, by its attorney, Matt. G. Reynolds, and for answer to the amended petition filed herein says:

It has no knowledge or information sufficient to enable it to form a belief as to whether, on the 25th day of February, 1831, Nerio Antonio Montoya petitioned the ayuntamiento of the town of Tome to recommend to the territorial deputation that he be placed in possession of a half a league of land near the Manzano grant, nor as to whether said ayuntamiento did, on the 19th day of March, 1831, recommend the donation of said land as prayed, nor as to whether said territorial deputation, on the 12th day of November, 1831, did undertake to grant the land as prayed for to said Montoya; but it denies that said territorial deputation, with the consent and participation of the acting political chief and governor, granted the land prayed for, and alleges that the laws of Mexico did not provide for an acting political chief and governor for New Mexico in 1831.

Further answering, it alleges that if there was such an officer as acting political chief and governor, who participated in the deliberations of the territorial deputation on November 12th, 1831, he only so participated as an *ex officio* member of said body and did not act as governor.

32 Further answering, it alleges that the territorial deputation had no power or authority to grant the public lands of Mexico, and that if it attempted to make the grant alleged in said petition its action was without warrant or authority of law and in

nowise bound the Mexican government or imposed any obligations upon the United States as successor of the Mexican government, and that said alleged grant is void.

Further answering, it says that it has no knowledge or information as to whether or not the possession of such property was delivered to said Montoya, as in said petition alleged, but says that if possession was so delivered it was without warrant or authority of law.

Further answering, it denies that the said alleged grantee, after having received possession of said land as alleged in said petition, remained in possession thereof up to the time of the occupation of New Mexico by the military forces of the United States, in 1845.

As to the other allegation- of said petition, it says it has no knowledge or information sufficient to enable it to form a belief as to whether or not the same are true, and prays that plaintiff be put to strict proof of said allegations.

Further answering, the said United States says that the tract of land so claimed to have been granted as in said petition set forth is entirely included within the exterior limits of a certain other tract of land which in the year 1819 was granted by the governor of the then province of New Mexico to one Bartolome Baca; which said last-mentioned tract of land is described as follows, to wit:

33 Bounded on the north by the Ojo del Cuervo, following its range to the Ojo del Chico; on the east by the Peda rual hill, on the south by the Ojo del Cibalo, on the west by the summit of the mountain.

That a claim for said last-mentioned tract of land under and by virtue of the said grant to the said Bartolome Baca was presented to this court under the provisions of an act of Congress entitled "An act to establish a court of private land claims and to provide for the settlement of private land claims in certain States and Territories," approved March 3rd, 1891, by the heirs and legal representatives of the said Bartolome Baca on January 9th, 1893, and such proceedings were had in said court on the said claim, that on the 29th day of September, 1894, the said grant of the said tract of land was recognized as a good and valid grant by the Spanish authorities to the said Bartolome Baca, and a decree of confirmation of the said claim to the extent of eleven (11) square leagues was entered by the said court.

Further answering, the said United States says that in the year 1841 a grant was made by the authorities of the Republic of Mexico to twenty-seven (27) persons, residents of the jurisdiction of Valencia, of a tract of land described as follows, to wit:

From the spring of Torreon towards the north to the lands of Tajique, a distance of about eight hundred (800) varas; from said spring to the south one (1) league, on the east as far as the water reached, and on the west to the ranch belonging to one Nerio Antonio Montoya.

That a claim for said land so granted was presented to the surveyor general of the Territory of New Mexico under the 8th section of an act of Congress approved on the 8th day of July, 1854, in the

year 1856; which said claim was afterwards approved by the said surveyor general and recommended to Congress for confirmation.

That thereafter and on, to wit, the 21st day of June, 1860, the Congress of the United States confirmed the said claim as recommended for confirmation by the said surveyor general.

34 That thereafter and on, to wit, the 20th day of June, 1871, the said tract of land so claimed and so confirmed by Congress was surveyed under the direction of the surveyor general of the Territory of New Mexico and its extent and boundaries definitely located by such survey, and that thereby and by said confirmation claimants of said grant became and were vested with a full and perfect legal title to all the lands included within the said tract of land as surveyed and located as aforesaid.

That a large portion of the lands now claimed by the petitioner in this cause are included within the exterior boundaries of the tract of land so granted by the Mexican authorities to the twenty-seven (27) individuals of the jurisdiction of Valencia and so confirmed by Congress and surveyed and definitely located by the surveyor general of the Territory of New Mexico.

Now, having fully answered, it prays the court that a decree may be entered rejecting the confirmation of said alleged claim or grant, and for such other and further orders as may seem meet and that this court may be authorized to make in the premises.

MATT. G. REYNOLDS,
U. S. Attorney.

35 And afterwards, to wit, at a stated term of said court begun and held at Santa Fé, New Mexico, on the second day of March, 1896, and on the first day of said term, the same being March second, 1896, the following, among other, proceedings were had, to wit:

J. FRANCISCO CHAVEZ
vs.
THE UNITED STATES.

The above-entitled cause having been called for trial, there appeared F. W. Clancy, Esq., for and on behalf of the plaintiff. Summers Burkhart, Esq., assistant U. S. attorney, and Matt. G. Reynolds, Esq., U. S. attorney, appeared for and on behalf of the said defendant, The United States. The parties herein having announced themselves ready, the trial of the cause was proceeded with on the pleadings presented. Witnesses were presented and examined, oral and documentary proof was produced, after which the cause was partially argued and submitted.

36 And be it farther remembered that on the trial of the said cause the following proceedings were had, as shown by the transcript of the notes of the official stenographer of said court; which transcript was and is in the words and figures following, to wit:

37 In the U. S. Court of Private Land Claims, District of New Mexico.

J. FRANCISCO CHAVES, Plaintiff,
vs.
THE UNITED STATES, Defendant.

Involving the property claimed under the grant to Nerio Antonio Montoya.

Now, at this day, to wit, the 2nd day of March, A. D. 1896, appear the parties by their respective counsel, Mr. F. W. Clancy, for plaintiff, and M. G. Reynolds and S. Burkhart, for the defendant, and, announcing themselves ready for trial, the following proceedings were had:

Mr. CLANCY: I offer in evidence the original petition and papers described in the amended petition as included in Exhibits "A" and "B," being the Spanish and English from the office of the surveyor general of this Territory, showing what is claimed to be the grant.

(The same are identified as Exhibits A and B respectively.)

Mr. BURKHART: We object to their introduction on the ground that they are not archives and because they are not and do not purport to be the originals in this case, but are copies made by no one authorized under the law to make authenticated copies, and, further, because the said documents are not authenticated by any one.

By the COURT: Admitted subject to the objection.

Mr. CLANCY: I also offer in evidence a deed from the original grantee, Montoya, to Juan Perea, which appears as a part of Exhibit A and a translation of which is included in Exhibit B filed in this case.

It is admitted by the defendant, The United States, that J. Francisco Chaves, the plaintiff herein, has succeeded to all the rights of the original grantee, if any, in this case.

Mr. CLANCY: Very well. I now desire to offer in evidence the original papers of the grant to the town of Torreon, which come from the office of the surveyor general, copies of the official translation of which are already on file in this case.

(The same will be identified as Exhibit C herein.)

38 Mr. CLANCY: I desire to offer in evidence, from the archives of the office of the surveyor general, a letter from Jose Antonio Chaves, at that time governor of New Mexico, and addressed to Miguel Olona. This is dated December 22, 1831, and Olona is the officer who put the grantee in possession.

Mr. BURKHART: We object to it on the ground that it is immaterial and incompetent.

Between counsel it is agreed that there is no contest as to the genuineness of the paper just introduced.

FRANCISCO SANCHES LOPEZ, introduced as a witness on behalf of the petitioner, testified through the medium of the official interpreter as follows:

Direct examination by Mr. CLANCY:

Q. What is your name?
A. Francisco Sanchez Lopez.
Q. Where do you live?
A. Tajique.
Q. In the county of Valencia?
A. Yes, sir.
Q. How old are you?
A. I do not know how old I am, but I am very old.
Q. Do you remember when the American soldiers came into this country?
A. Yes; then they went over into Chihuahua.
Q. How old were you at that time, do you remember?
A. Yes; I was already a grown man—a laborer.
Q. Did you ever know a man by the name of Nerio Antonio Montoya?
A. Yes; we lived right near his house.
Q. Where was his house?
A. Here at Peralta.
Q. Do you know a place that is called the Ojo de en Medio or Ojo del Cochino?
A. Yes; I know that well.
Q. How far is that place from Tajique, where you live?
A. About half a mile, probably less, from Tajique to the spring.
Q. Which spring?
A. Cochino.
Q. How long have you lived at Tajique?
A. I was the first settler there, and I knew the place before it was settled.
Q. How long ago was that?
A. I do not know; I cannot read.
Q. Did you ever know of Nerio Antonio Montoya having any connection with that place—that is, near Ojo del Cochino?
A. Yes; he had his lambing stations and some shanties there.
Q. When did you first know of his having any shanties or houses at that place?
A. He stayed there a long while; I think it was over seven years.
Q. How old were you when he first came there?
A. I have already said I was a full-grown man—a laborer.
39 Q. Do you know whether he had his houses there before or after the time the Americans came through here?
A. I think it was before the Americans came here.
Q. How long before?

Mr. REYNOLDS: Now, I object to this way of examining a witness This witness has testified all he knows about it, and his examina-

tion has no purpose but suggesting to the witness certain answers and is not direct examination by any means.

Objection overruled.

A. I don't know how long a time it was, but it was a very long time before.

Q. Do you know the place where Torreon was settled?

A. Yes; very well.

Q. Were those houses of Nerio Antonio Montoya at the Ojo del Cochino before or after Torreon was settled?

A. Before.

Q. Do you know how great a length of time they had been there before Torreon was settled?

A. I do not know, but it was a long time. At that time nobody lived at Torreon yet.

Q. Do you know why that spring is called Ojo del Cochino?

A. That name was given it because it had large numbers of swine there; that is why it is called that.

Q. Do you mean that Nerio Antonio Montoya had swine there?

A. Yes, sir; and many of them.

Q. Do you know whether he cultivated any portion of the land at or near that place?

A. He cultivated places right near the house that he had fenced up.

Q. Was that near the spring which you have testified was the Ojo del Cochino?

Objection made to the form of the question; withdrawn.

Q. Where was the land which Montoya cultivated with reference to the spring called the Ojo del Cochino?

A. The houses were on other side of the arroyo, and the cultivated lands were on this side of it.

Q. Do you know a place in that vicinity called the Canada del Cuerbo?

A. Yes; and there is a spring there.

Q. What is it called?

A. The Cuerbo spring.

Q. Where is the Canada del Cuerbo with reference to the spring called Ojo de- Cochino?

A. The Ojo del Cochino is here (indicating with his hand), and in this direction the Canada del Cuerbo lies (indicating to the southeast).

Q. Is the Canada del Cuerbo north or south of the Ojo del Cochino?

A. It lies in that direction (pointing again to the southeast).

Q. Do you know a place in that vicinity which is called the Rancheria de los Apaches?

A. Yes, sir; that is below.

Q. Below what?

A. The Ojo de los Cochinos.

Q. Do you remember when, if ever, Montoya relinquished possession and control of the land about which you have been testifying?

Mr. BURKHART: I object to the form of that question. He has introduced a deed here which shows that the grantee sold the land to Juan Perea, and the deed itself shows when he relinquished possession.

Mr. CLANCY: I desire to show how long Nerio Antonio exercised control over that land, and further that, as a matter of fact, the people of Torrion never have asserted their claim as far as the surveyor has extended it—that's what I am leading up to—that this present claimant and those under this grant have had possession under this grant for many years down to the points described in our petition, and that their claim has been recognized by the inhabitants of Torreon, and I now state that part of the land claimed in our amended petition is embraced within the survey and patent of the Torreon grant.

By Mr. REYNOLDS: He may go on and examine the witness, then.

Q. Do you remember when, if ever, Montoya relinquished possession and control of the land about which you have been testifying?

A. He was living at Peralta when he went to Torreon.

Q. When did he leave, if ever he did leave, his land at the Ojo del Cochino?

A. He did not leave it until he died. He paid it to Don Mariano.

Q. Mariano who?

A. Father of Don Francisco Chaves.

Q. Have you any knowledge why he paid it to Don Mariano?

A. He lost a herd of sheep.

Q. To whom did the herd of sheep belong?

A. Don Mariano.

Q. After that time who had control and possession of that land?

A. Don Francisco Chaves.

Q. Do you know to what place towards Torreon Don Francisco had possession?

I object to the question as incompetent and immaterial.

No ruling.

A. From his house way down—from the house where he was for a long time until his house fell down; he was cultivating that place.

41 Q. Do you know how far or to what points towards Torreon his lands extended?

Mr. BURKHART: Object to that because the grant papers themselves are the best evidence of the extent of the grant.

No ruling.

A. To the rancheria. That is what we call it.

Q. Do you know in what direction the Ojo del Cuerbo is from the rancheria?

A. Yes, sir; it lies in this direction (indicating southward).

Q. Do you know what has been generally recognized by the

people of Torreon as the boundary between their lands and this land of Don Francisco Chaves?

Mr. BURKHART: I object to that on the ground that the papers themselves show what the boundaries are.

By the COURT: Objection sustained.

Cross-examination by Mr. BURKHART:

Q. Nerio Antonio Montoya lived at his Peralta ranch a long time, didn't he?

A. Yes, sir.

Q. How far from his house did you live?

A. Right near him.

Q. Did you go to Tajique while he was still living at Peralta?

A. I went first to Tajique and remained there.

Q. After he left Peralta he went to Torreon to live, didn't he?

A. Yes, sir; he went to Torreon, but he had already bought the ranch at Peralta of Don Mariano.

Q. At the Ojo del Cochino he had corrals for his sheep, didn't he?

A. Yes, sir; at the old farm.

Q. He never lived there, did he?

A. Yes; he lived there a long time.

Q. At the spring?

A. Yes; at the Ojo del Cochino.

Q. After he went to Torreon or before?

A. After he paid he went to Torreon.

Q. What kind of houses did he have there?

A. Shanties.

Q. Where did his family live?

A. There at that ranch. When he bought it he made shanties at the Torreon.

Q. What kind of a house did he have at that spring?

A. I say that he had shanties made out of timber.

Q. He lived at Peralta until he went to Torreon to live, you say?

A. Yes, sir.

Q. How far is it from the town of Torreon to the Ojo del Cochino?

—. ——.

42 Q. How near?

A. It is very near; there is only the bend of the cañon between.

Q. Is the spring in the cañon?

A. Yes.

Q. How wide is the cañon?

A. It is very wide.

Q. What do you mean by very wide?

A. The cañon is very wide and an arroyo runs through it.

Q. How many varas wide is the cañon?

A. I cannot state how many varas.

Q. Is there water in that arroyo?

A. Yes.

Q. How large a family did Nerio Antonio Montoya have?

A. Very large family; there were many children.
Q. Was it before or after the Americans came to this country that Don Nerio sold to Don Mariano?
A. I think he paid it to him before the Americans came in.
Q. Did not Don Mariano go right into possession as soon as Don Nerio sold to him?
A. Yes; started farming it at once.
Q. And then Don Francisco come there just after it was sold?
A. I suppose he was there.
Q. Don't you know anything about it?
A. No; I do not know for certain. I did not see him then.
Q. Where did Don Mariano live before?
A. When he paid him he was living at Bosque—Bosque de los Pinos.
Q. And where did he live, then, after he paid him?
A. He lived at Bosque de los Pinos.
Q. Where is Bosque de los Pinos?
A. It is on this side of Peralta. It is on the bank of the river—the Rio Grande.
Q. Did Don Francisco ever come to the Ojo del Cochino to live?
A. He lived there.
Q. Was that before or after the Americans came in?
A. The Americans had already come in when he was living there at his house.
Q. How long after the Americans come in?
A. He lived there for a long time, and the houses began to be dilapidated, and he changed his residence to the river again.
Q. How long after the Americans come in was it that Don Francisco Chaves went there to live?
A. I cannot remember.
Q. Was it a long time or a short time?
A. I do not remember; I do not know.
Q. Did Don Mariano ever live there?
A. No.
Q. Did Don Nerio have his family at Ojo del Cochino or at Torreon?
43 A. Yes; he had them at Ojo del Cochino, and when he delivered up the Ojo del Cochino he moved them to Torreon.
Q. Where did Don Nerio go from Peralta to live?
A. Torreon; he remained at Torreon.
Q. But he lived at Peralta?
A. Yes.
Q. And went from there to Torreon?
A. Yes, sir.

Redirect examination:

Q. When you first went to Tajique was it before or after Montoya was at Ojo del Cochino?
A. We had been living a long time at Tajique when he went to Torreon.

Q. I didn't ask you when he went to Torreon, but when he went to Ojo del Cochino. At the time you went to Tajique was he or not living at Ojo del Cochino?

A. Yes, sir; he was living there already and lambed there.

Q. Will you please describe how those jacales which you say Nerio Antonio Montoya had at Ojo del Cochino—how they were built?

A. They were made in that direction, with the doors towards the north.

Q. How high were they above the ground—the houses?

A. They were not very high. They were forks stuck in the ground and timber placed around on them.

Q. What kind of roofs did they have?

A. Oak plank placed on the top.

Q. Are there any such houses in that part of the country now?

A. Yes; there are some shanties there of that description.

Recross-examination:

Q. Mr. Sanches, isn't it true that Mr. Montoya lived at Peralta and would go up to Ojo del Cochino occasional-y to lamb his sheep there?

Mr. CLANCY: I don't think that is a fair question the way it is put, but I shall not object to it. I certainly do not think it is fair.

A. Yes; he went there.

Q. What kind of a house did Montoya have at Peralta; was it a large house or a small house?

A. It was a round adobe house.

Q. It was not a jacal?

A. No, sir.

Q. Are there any adobe houses at Torreon?

A. Yes; there are.

Q. Aren't most of the houses at Torreon adobe?

A. No; there are some adobe and some jacales.

Q. When Mr. Montoya farmed the land he used to go from Peralta to farm, didn't he?

A. Yes; he did; but he always had his ranch there with his sheep.

44 Q. But he lived down at Peralta?

A. At that time he lived at Peralta.

Q. How long had you been at Tajique when Mr. Montoya come to Torreon to live?

A. I do not know. It was many years already.

Q. You are one of the grantees of the Tajique grant?

A. Yes.

Q. How long had you been at Tajique when the grant was made?

A. I do not know how long a time. I do not understand how to calculate the time.

Q. Was the grant to the people of Tajique made before the grant to the people of Torreon?

A. I think the grant to Tajique was first.
Q. Was the grant to the people of Tajique made before Montoya come to Torreon to live?
A. No, sir.
Q. He come to Torreon to live before the grant was made to Tajique?
A. Yes; they attempted to settle that place first.
Q. Was Tajique settled before Montoya left Peralta?
A. Yes; Tajique was already settled.
Q. Had it been settled a good many years before Montoya left Peralta?
A. He took that ranch there at the time Tajique was settled.
Q. He still lived in Peralta, didn't he, *went* he took that ranch?
A. Yes.
Q. He lived there many years after you went to Tajique?
A. Yes; he lived at Peralta many years.
Q. He lived a long time at Peralta after you went ta Tajique to live, did he not?
A. Yes, sir.
Q. And then moved from Peralta to Torreon?
A. Yes, sir.

Redirect examination:

Q. Did Nerio Antonio Montoya always live at Peralta until he went to Torreon to live?
A. Yes; he lived at Peralta until he come to Torreon to live.
Q. Had he *never* lived anywhere else than Peralta?
A. No, sir.

Mr. CLANCY: I ask the permission of the court to put this question to the witness: Did you not testify awhile ago that Montoya with his family lived at Ojo del Cochino? I ask this because I think the witness has been confused.
By the COURT: He may answer the question.
A. Yes, sir; he was there with his family during the lambing season.

Witness excused.

45 J. FRANCISCO CHAVES, the petitioner, sworn as a witness in his own behalf, testifies as follows:

Direct examination by Mr. CLANCY:

Q. State your name, age, and residence.
A. J. Francisco Chaves. I live at Progreso, Valencia county, New Mexico. I am sixty-two years old.
Q. Are you the claimant in this case?
A. I am.
Q. When did you first become acquainted with the land claimed in this case?
A. I only became personally acquainted with it in 1858.

Q. How well did you become acquainted with the land at that time?

A. I think as thoroughly as a man could become acquainted with such land by living upon it and traveling over it.

Q. When did you live upon it and for how long?

A. From 1858, for about nine years, and expended about ten thousand dollars in building houses.

Q. On what part of the property was that house built?

A. About five hundred varas north of the eastern boundary, in the cañon of the Ojo de Cuerbo and south of the Ojo de en Medio.

Q. W-re there any houses at the Ojo del Cochino when you became acquainted with the land?

A. There were ruins; there were a number of ruins of jacales. I used them for wood while I was building my houses.

Q. Will you describe briefly those jacales?

A. If they are of one room only, you take four poles, each of which is to be one of the corners, and these—one end is put in the ground, and on the other, usually for convenience, there is usually a fork at the top. They are buried in the ground about two feet. Then there is a beam stretched across the lengthy way of the house, and this is put between these forks, and then this is covered over with suitable brush or timber. Then all around, running to these four corners, they dig a ditch in the ground about six inches deep, and into this brush of oak or ceder, cut the proper length, is stood up so as to make the walls and then securely packed down. Of course, they are not all alike, but this is the general plan.

Q. Are there any such houses in the Rio Grande now?

A. Very rarely. Sometimes you will find them when there is timber near.

Q. In that part of the Rio Grande, the valley of the Rio Grande, are such houses built?

A. I have never seen any there.

Q. During the time that you first knew anything about this land and since, what, if any, possession and control have you had over it?

Mr. BURKHART: Object to that as incompetent and immaterial. It makes not difference what possession or control has been
46 exercised since 1848. Petitioner's rights must depend upon what was done prior to that time.

By the COURT: Objection sustained.

Q. Did you ever know the original Nerio Antonio Montoya?

A. I knew him very well.

Q. When did you first know him?

A. In 1841.

Q. Where did you know him?

A. At that time at Peralta. That's the first place I met him.

Q. For how long a time after that did you know him?

A. Until his death. That, I believe, occurred somewhere about 1862.

Q. During the time *you* that you knew him where did he live?

A. He lived most of the time I knew him at Torreon—when I

knew him personally—but when I first met him he lived at Peralta.

Q. Well, when did he go to Torreon to live after that?

A. I think he went there—although I am not certain about the year—just about the time the American troops under General Kearney came into this Territory—in 1846.

Q. Have you any knowledge as to when—as the witness stated here—he "paid" this property to your father?

A. I know from Don Nerio Antonio Montoya himself that he paid over this property in question and the house he was then living in at Peralta to the administrator of the estate of my grandfather, and my father was that administrator for my grandfather and my grandmother both. He was then living in Peralta. Don Nerio was then living on this property and received permission to live in that house at Peralta. From what he said when he went there he turned over the property soon after, I think, he gave up the house. I think he only had possession of it for about four years, but he turned over the property at that time and the administrator accepted it, but the deeds were not made out at that time; not until 1846 or 1848. My father, who was the administrator, died in the meantime.

Q. Now, in what year did your father die?

A. My father died in the year 1845.

Cross-examination by Mr. BURKHART:

Q. Col. Chaves, do you know the boundaries of the Bartolome Baca grant?

A. Yes, sir.

Q. You were a witness before this court in the Bartolome Baca case, were you not?

A. Yes, sir.

Q. You testified to the boundaries at that time?

47 A. I don't remember whether I was asked the question or not, but I know the boundaries.

Q. This Nerio Antonio Montoya grant is entirely within this Bartolome grant, as it was claimed before this court?

A. Yes, sir.

Q. Do you remember when General Kearney came into this country?

A. Yes, sir. I was interpreter for General Kearney. I happened to be there when he came in with the troops and interpreted for him. I was thirteen years old at the time.

Q. What was your father's name?

A. Mariano Chaves.

Q. And he died in 1845?

A. Yes, sir.

Q. Where did your father live?

A. He lived at the Bosque de los Pinos.

Q. About when did he turn this estate over to your father? When did Nerio Antonio Montoya turn this estate over to your father for the estate of your grandfather?

A. I don't know exactly; I think about 1841.
Q. How long did he live at Peralta after 1841?
A. I think up to 1846.
Q. Colonel, the Ojo de en Medio is in the same cañon as the Ojo del Cochino?
A. Yes, sir. They are not the same spring, but are in the same cañon.
Q. How far apart are they?
A. About three-quarters of a mile.
Q. In which direction is the Ojo del Cuerbo from the Ojo de en Medio?
A. East.
Q. What is that cañon called?
A. The people call it the Cañon de los Cochinos.
Q. How wide is that cañon?
A. In some places it is a quarter of a mile.
Q. It is not a box cañon, then, at any place?
A. It is not narrow up there at the Ojo de en Medio; it is quite wide. The spring there is not in the cañon; it is way up above, in marshy ground.
Q. Outside of the cañon, what is the character of this grant?
A. From the Ojo de en Medio towards the south it is rolling in character; some open places and valleys that can be cultivated.
Q. Any water on it?
A. None except at the Cuerbo.
Q. Between the Cañon del Cuerbo and the cañon in which the Ojo de en Medio is situated there is no water, is there?
A. No, sir; it is timber and open valleys.

Redirect examination by Mr. CLANCY:

Q. State whether or not it is possible to cultivate land on that side of the mountains without irrigation.
A. Yes, sir; it is.

48 Recross-examination:

Q. All of the lands that have been cultivated on that grant are in that cañon, are they not?
A. No, sir.
Q. You don't know what was on that grant before 1848, do you?
A. Only from statements made by Nerio Antonio Montoya and other people who lived there and in the vicinity of that place.
Q. How much of the land in that tract is susceptible of cultivation?
A. I presume somewhere in the vicinity of two thousand acres. That is unirrigated. You might irrigate about one hundred acres. That's about all the water there is.

Witness excused.
Petitioner rests.

For the Government:

Mr. BURKHART: I wish to introduce the proceedings of the provincial deputation, taken from the records of that body, for the eleventh of November, 1831.

I also desire to offer in evidence, from the same book, the record of the proceedings of the territorial deputation of New Mexico at the session held on the 12th of November, 1831, copies and translations of which have already been filed.

It is admitted that the land embraced in the present claim lies within the exterior boundaries of the Bartolome Baca grant, which was confirmed by this court to the extent of eleven leagues, as shown by the decree which the United States wishes to introduce in evidence here.

Mr. BURKHART: We now offer in evidence the decree of this court in the Bartolome Baca case.

The United States rests.

Case closed. Argument by counsel. Submitted.

I hereby certify that the above and foregoing contains a full, true, and correct transcript of all the proceedings had in this cause upon the trial of the same on the 2nd day of March, A. D. 1896.

LYMAN F. PARKER, JR.,
Official Stenographer.

Santa Fé, N. M., Sept. 1, 1896.

(Claimant's Exhibits A and B appear in the earlier part of this record, immediately following the original petition.)

49 (EXHIBIT C REFERRED TO IN FOREGOING TRANSCRIPT.)

Grant—Spanish.

Sello. (Sello.) Dos Reales.

Pra los anos de mil ochocientos cuarenta y mil ochocientos cuarenta y una.

En esta jurisdicion de Valencia a los quinso dias del mes de Febrero de mil ochocientos quarenta y uno, ante me el C. Vincente Otero Juez de Paz suplente de dicha jurisdicion, y las testigos de mi asistencia, comparecieron veinte y siete individuos de esta mismo jurisdicion diciendo que en virtud de no tener terreno en que poder cultivar tierra para poder mantenar sus familias estan propuestos a pedir el punto del Torreon, y que a cuyo fin, confieren por este, todo su poder y amplio, a Don Nerio Antonio Montoya para que a su nombre y representacion de sus propios personas derecho y acciones, solicite la merced del espresado punto del Torreon, a donde corresponde, y para los fines que son consiguientes, estiendo el pre-

sente poder firmandolo con los testigos de mi asistencia de que doy fee.

VINCENTE OTERO.

De asistencia: JOAQUIN ALARIA.
De asistencia: JUAN SANCHES.

Admito el atecedente poder.

NEREO ANTO. MONTOYA.

Senor Prefecto D. Antonio Sandobal:

El C. Nereo Antonio Montoya vecino de Valencia por se y a nombre de los individuos que cita el ajunto poder ante V. S. con el devido respecto paresco y digo; que viendome escaso tanto yo como mis poderantes, de terreno de labor para la manutencion de nuestras familias y hallandose libre sin perjuicio de tercero el ojo del Torreon, cuya veracidad de las tierras que esta bana prometan una esperanza muy ventajosa en la agricultura cosa muy bien recomendable por nuestras sabias leyes, bajo estos principios paso vendidamente a suplicar a V. S. se sirva en nombre de la nacion concedernos el goce de dicho terreno en los terminos siquientes; que del ojo ya citado para el Norte con las tierras de Tajique que habra cosa de ochocientos varas para el sur una legua, para el oriente hasta donde alcanza la agua y por el poniente hasta el rancho de mi pertenencia que habra cosa de quinientas varas, por lo espuesto.

H. V. S. pido y suplico se me conceda lo que pido, para que se nos estienda la merced de estili sin perjuicio de los derechas judiciales con lo que reciveremos merced.

Albuquerque, Febrero 16 de 1841.

NEREO ANTONIO MONTOYA.

BARELAS, *Febrero* 23 *de* 1841.

Pasa esta instancia al Juez de Paz de Tome para que informe circumstanciadamente tanto sobre si los licantes tienen terrenos de que subsistir, como si el que solicitan es baldio y no pertenece a alguna persona y la naturaleza del terreno.

SANDOBAL.

FRANCISCO SARRACINO, *Secretario.*

TOME, *Marza* 3 *de* 1841.

En cumplimiento al Decrete del Sov. Prefecto Don Antonio
50 Sandobal fecha 23 del proximo Febrero, digo que los individuos anotados en la ajunta lista me he informado no tienen tierras sufficientes en que subsistir y el terreno solicitado ofrece las ventajas que el presentante espone en su antecedente presentacion, no es perjuicio de terceros y esta baldio. So tachado no vale.

JUAN DE JESUS CHAVEZ.

BARELAS, *Marzo* 3 *de* 1841.

Por lo que resulta del anterior informe parece no haber obstaculo para concedar a los liciyantes la gracia que solicitan, en tal virtua pase esta instancia al Juez de Paz de Tome D. Juan Chavez para

que pase a dar la posesion que por esta Prefectura se les concede nacional y personalmente en el nominado terreno cuya posesion formalo zara el dicho Juez a nombre de la Nacion Mejicana (Q. D. G.) con todas las solemnidades de estilo y sin perjuicio de tercero, dejandro libres los pastos, lenaderos, cortes de madera, a caminos acostumbrados, solo para labor plaza corrales y demas usos comunes y necesarios senalandoles el terreno sufficiente para uno y otro sopena de nulidad si incurrieren en alguna falta, y en la misma incurriran si no cultivan la tierra dentro del termino prevenido por las leyes; a cuyo efecto el predicho juez formara el expediente correspondiente, y con la dara cuenta a esta Prefectura para que quede archivado en sus registros.

ANTONIO SANDOBAL.

FRANCISCO SARRACINO, *Secretario.*

En esta jurisdicion de Tome a las diez del meo de Marzo del ano de mil ochocientos cuarenta y uno yo el juez de Paz de dicha jurisdicion C. Juan de Jesus Chavez, en virtua de la comision que me es conferida por el Sov. Prefecto del Segundo Distrito D. Antonio Sandobal por el anterior decreto de tres del corriente, y en cumplimiento de dicho decreto pase el puesto del Torreon y hallandome en el citado parago con situacion de Don Nerio Antonio Montoya y los demas pobladores que constan en la ajunta lista a quienes les hise saber la merced que antecede y no haviendo resultado contradicion de partes, pase con los testigos de asistencia que al efecto nombre a reconocer el terreno, y tirando las medidas de Norte a Sur una legua de el terreno, y torando las medidas de Norte a Sur una legua de oriente a poniente legua y media, y les puse por linderos de Norte a sur el lindero de Tajique por el Norte, sur el serro del Cuerbo, Poniente el lindero del rancho del sitado Don Nereo Antonio Montoya dentro de estas medidas les medi a cada poblador cien varas tierra para lavor tirados de oriente a poniente, a mas de las cien varas en donde les senale la plaza para corra les y demas usos comunes les di a cada poblador un pedaso de tierra para huertas immediatas a la misma plaza pues asi me pidieron lo que los concedi como queda dicho, a Don Nereo Antonio Montoya le di a mas de las cien varas que tiene senaladas el ancon que esta al Norte del mismo serro del Torreon, a Mauricio Sanches le di por suerte el anconsisto del rancho del Finado Don Bartolome Baca al sur hasta el camino acostumbrado del canon de los Comanches oriente hasta el camino de Tajique, Norte el Rio, Poniente a donde el ojo que les concedi para que las go sen por si sur hijos herederos y subsesores, cultivades dichas tierras en el termino de la ley todo lo que les concedi nacional y personalmente a nombre del Supremo Gobierno
51 de la Nacion Mejicana (Q. D. G.) a cuya masa pertenecemos quedando advertidos los dichos pobladores del sitado decreto del Sov. Prefecto y en cuya los cogi de là mano los pasie poriachas tiaras tiranon piedras arrancaron sacates dieron voces diciendo todos a una vos viva el Supremo Gobierno de las Nacion Mejicana (Q. D. G.) y en senal de verdadera posesion la que les di y aprendieron quieta y pacifica sin contradicion, y para que conste lo puse por

diligencia que firmecon los de mi asistencia con quenes antuo a falta de escribanos que no los hay en este Departmento en dicho dia mes y ano de que doy fee como dicho es. Se entre renglon C. Juan de Jesus Chavez, vale.

JUAN DE JESUS CHAVEZ.

Asistencia: JUAN LUERA.
Asistencia: ANTONIO BARELA.

Otro si por no haber citado los linderos de las tierras de labor que les senale lo pongo eneste auto, y son de Norte a Sur desde la Mecita que esta al el otro lado del Rio, sur las asequia madre en donde quedan dose varas libres para que yransitan y saquen sus consechas los referidos pobladores doy fe fecha.

JUAN DE JESUS CHAVEZ.

Asistencia: JUAN LUERA.
Asistencia: ANTONIO BARELA.

52 (TRANSLATION OF EXHIBIT C.)

Seal third. (Seal.) Two rials.

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

In this jurisdiction of Valencia, on the fifteenth day of February, in the year one thousand eight hundred and forty-one, before me, Citizen Vicente Otero, substitute justice of the peace of said jurisdiction, and my attending witnesses, appeared twenty-seven individuals of this same jurisdiction, who stated that, having no land to cultivate to procure the means of supporting their families, they have determined to ask the site called Torreon, and for that purpose they hereby confer ample authority upon Don Nerio Antonio Montoya, in their name and representing their persons, rights, and interests, to solicit a grant to the aforementioned site of Torreon from the proper authority, and for the benefit of whom it may concern I have executed this power of attorney, signing the same with my attending witnesses, to which I certify.

(Signed) VICENTE OTERO.

Attending:
(Signed) JOAQUIN ALARID.

Attending:
(Signed) JUAN SANCHEZ.

I accept the foregoing trust.
(Signed) NERIO ANTONIO MONTOYA.

Seal third. (Seal.) Two rials.

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

To the hon. prefect, Don Antonio Sandoval:

Citizen Nerio Antonio Montoya, a resident of Valencia, for himself and in the name of the individuals contained in the accom-

panying power of attorney, appear before your honor with all due respect and state that myself as well as my clients being short of tillable land for the support of our families, and the Torreon spring being unoccupied, and the fertility of the soil it waters being such that it promises to yield a bountiful crop and be a benefit to agriculture—a purpose so much recommended by our wise laws—for these reasons I humbly pray your honor to grant us without injury to third parties the above-mentioned lands in the name of the nation, with the following boundaries: From the spring above mentioned towards the north with the lands of Tajique, a distance of about eight hundred varas, to the south one league; on the east as far as the water reaches, and on the west to the farm belong-
53 ing to me, being a distance of about five hundred varas; in view of all of which I pray and request your honor to grant our petition, in order that the customary title deed may be executed without injury to judicial rights, by which we will receive grace.

Albuquerque, February 16, 1841.

(Signed) NERIO ANTONIO MONTOYA.

BERELAS, *February* 23*d*, 1841.

This petition is referred to the justice of the peace of Tome to report fully if the petitioners have any lands from which to obtain their subsistence, and also if the land they ask for is vacant and belongs to no one, and what is the nature of the land.

(Signed) SANDOVAL.

(Signed) FRANCISCO SARRACINO, *Secretary.*

In compliance with the decree of the prefect, Don Antonio Sandoval, dated on the 23d of February last past, I have to report that I have ascertained that the persons contained in the accompanying list have not lands sufficient to subsist upon, and that the land solicited offers all the advantages the petition claims for it. It will not injure any third party and is unoccupied. (What has been erased is void.)

Tome, March 1st, 1841.

(Signed) JUAN DE JESUS CHAVES.

BARELAS, *March* 3*d*, 1841.

From the foregoing report it appears that there is no obstacle in granting the request of the petitioners; therefore these proceedings are referred to Don Pedro Chaves, justice of the peace of Tome, in order that he may proceed to give them the national and personal possession of the land granted by this prefecture; which possession will be formally made in the name of the Mexican nation (which may God preserve), with all the customary solemnities and without injury to third parties, leaving pastures, wood, timber, and customary roads free, excepting lands for cultivation, town-site enclosures, and for other necessary and common uses, giving a sufficient amount of land to each one, under penalty of forfeiture if they com-

mit any crime or if they fail to cultivate the land within the time prescribed by law, for which purpose the aforesaid justice will take such steps as may be necessary, reporting the same to this prefecture in order that it may be filed in its archives.

(Signed) ANTONIO SANDOVAL.

(Signed) FRANCISCO SARRACINO, *Secretary.*

54 Interlined is valid.

(Signed) JUAN DE JESUS CHAVES.

Attending:

(Signed) JUAN LUNA.

Attending:

(Signed) ANTONIO BARELA.

ADDENDA.—Not having mentioned the boundaries of the tillable lands I measured out for them, I state them in this decree, and they are from north to south from the little table-land on the opposite side of the river, south the main ditch (acequia madre), where twelve varas are left free for a road and to allow the said settlers to transport their crops. I certify date *ut supra.*

(Signed) JUAN DE JESUS CHAVES.

Attending:

(Signed) JUAN LUNA.

Attending:

(Signed) ANTONIO BARELA.

SURVEYOR GENERAL'S OFFICE,
TRANSLATOR'S DEPARTMENT,
SANTA FÉ, NEW MEXICO, *June 15th,* 1859.

The foregoing is a correct translation of the original on file in this office.

DAVID V. WHITING, *Translator.*

55 In this jurisdiction of Tome, on the tenth day of March, one thousand eight hundred and forty-one, I, Citizen Juan de Jesus Chaves, justice of the peace of said jurisdiction, by virtue of the commission entrusted to me by Don Antonio Sandoval, prefect of the second district, in the foregoing decree of the third instant and in compliance with said decree, I proceeded to the site of El Torreon, and, being then there, having summoned Don Nerio Montoya and the other settlers whose names appear on the accompanying list, to whom I made known the foregoing grant, and no question having arisen, I proceeded, with two attending witnesses, whom I appointed for the purpose, to examine the land, and, measuring from north to south one league and from east to west one and one-half league-, I gave them from north to south as their northern boundary the boundary of Tajique, on the south the Cuervo mountain, east the junction of the Torreon cañon with that of the Cuervo, west the boundary of the farm of Don Nerio Montoya. Within

these boundaries I gave to each settler one hundred varas of land for cultivation, measured from east to west. In addition to the one hundred varas I assigned to them for building the town, enclosures, and other common purposes, I gave to each settler a piece of land immediately adjoining the town for gardens, considering the same to be just, and having been requested to do so by the settlers, which request I complied with, as aforestated. In addition to the hundred varas above mentioned, I gave to Don Nerio Montoya the valley which is north of the Torreon mountain. I gave to Mauricio Sanchez, for his share, the little valley of the farm of the late Bartolomé Baca to the common road of the Cañon de los Comanches towards the south, on the east to the Tajique road, on the north the river, and on the west to the source of the spring; which I gave them to hold for themselves, their children, heirs, and successors, said lands to be cultivated within the period prescribed by law; all of which was granted nationally and personally in the name of the Mexican nation (which may God preserve), to which they belong. The settlers being notified of the aforementioned petition of the honorable prefect, I took them by the hand, walked with them over the land, they threw stones, pulled up grass, and all at one time cried, Long life! long life! to the supreme government of the Mexican nation (which may God preserve); and in testimony of legal possession which I gave them, and they received quietly and peaceably, without opposition, and in order that it may so appear, I placed it on record, signing the same with my attending witnesses, with wjom I act in the absence of notaries, there being none in this Territory, on said day, month, and year; to which I certify, as above stated.

CITIZEN JUAN DE JESUS CHAVES.

56 *Provincial Deputation.*

Secion del 11 de Novre de 1831.

Leyda y aprovada la acta antōr se dió cuenta con una esposicion del Sōr. Martinez en que manifiesta el que careciendo esta corporacion de facultades con qe remediar los muchos y graves males que aflixen á este Territorio, cré inutil su ecsistencia y perjudicial á los individuos que la componen, concluyendo con pedir se de cuenta con dhā. exposicion al Congreso General, y en el interin aquella soberania resuelve lo conbeniente continue sus Seciones S. E. Se mandó pasar á Comision en los Sres. Abreu, Ortis y Quintana. Se dio cuenta con un ofō. del Preceptor de 1as letras de esta capital en que havisa la morosidad y abandono de los Alcaldes y Ayuntamto de esta ciudad para hasér concurrir niños á la enseñanza, advirtiendo que no solo han sido desatendidos sus reclamos sino que se han despreciado las estrechas orns. del Sōr. Gefe Politico que ha librado al ejecto. Se mando transcrivir al expresado Sōr. gefe para que con multas y todo lo demás que juzque conbeniente Se Se ye se halle en la orvita de sus facultades apremie á los Alcaldes y Ayuntamto hasta hasér que la escuela esta asistida de niños, y vigilen sobre el cumplimento del Preceptor.

Se dio cuenta con un oficio del Sõr. Gefe Politico con que incluye ejemplares de los Dtõs. que ha recivido en el tiempo que S. E. ha estado en resezo. Se mandaron archivar.

57 Se dio cuenta con un informe del Ayuntamiento del Bado puesto á consecuencia de una instancia hecha por varios individuos de aquella yurisdiccion impetrando se les done para labor el terreno conocido con el nombre del macho, en cuyo informe se justifica no haver obstaculo para la donación que se pide. Se mando conseder.

Se dió asimismo cuenta con un oficio del Ayuntamiento de la Cañada en que pide se le suministran sincuenta p^{s} para utencilios de la escuela de aquella Villa. Semandaron negar.

Se levantó la Secion.

JOSE ANT^{o}. CHAVES. [SCROLL.]
SANTIAGO ABREU. [SCROLL.]
JUAN RAFAEL ORTIS. [SCROLL.]
AN$^{TO.}$ JOSE MARTINES. [SCROLL.]
TEODOZIO QUINT^{A}. [SCROLL.]
RAMON ABREU, *Srio.* [SCROLL.]

58 *Provincial Deputation.*

Translation of session of the 11th of November, 1831.

The preceding journal having been read and approved, a memorial of Mr. Martinez was taken up, in which he sets forth that as this corporation is without power to remedy the many and grave evils that afflict this territory, it believes its existence useless and prejudicial to the members of which it is composed, concluding by asking that this memorial be laid before the general congress, and that until that sovereign body decide what is proper its excellency continue its sessions. It was ordered to be referred to a committee composed of Messrs. Abreii, Ortiz, and Quintana.

An official communication from the teacher of the primary school of this capital was taken up, in which communication he calls attention to the delay and failure of the alcaldes and ayuntamiento of this city in causing children to attend school, remarking that not only have his requests been unnoticed, but also the strict orders which the political chief has issued on the subject have been ignored. It was ordered that a copy be *said* to the said chief, in order that by the imposition of fines and all means which His Excellency may deem proper and which may be within the sphere of his authority he shall urge the alcaldes and ayunciamento until they cause children to attend the school and watch over the fulfillment of the teacher's orders.

An official letter from the political chief was taken under consideration, in which he encloses copies of the decrees which he has received during the time that its excellency has been in recess. They were ordered to be placed in the archives.

There was taken under consideration a report from the ayuntamiento of El Bado, made in view of a petition of various individuals of that jurisdiction, asking that there be donated to them the

tract of land known as El Macho, in which report it is shown that there is no objection to the donation asked for. It was ordered to be granted.

59 There was also taken under consideration an official communication from the ayuntamiento of La Canada, in which that body asks that it be furnished with fifty dollars for supplies for the school. It was ordered that the request be refused.

The session was adjourned.

JOSE ANTONIO CHAVES. [SCROLL.]
SANTIAGO ABREII. [SCROLL.]
TEODOSIO QUINTANA. [SCROLL.]
JUAN RAFAEL ORTIZ. [SCROLL.]
ANTONIO JOSE MARTINEZ. [SCROLL.]
RAMON ABREII, *Sec'y.* [SCROLL.]

60 *Territorial Deputation.*

Secion del dia 12 de Nov^re^ de 1831.

Leyda y aprobada la acta antecedente. Se dió cuenta con una instancia del C. Nerio Antonio Montoya, vesino de Valencia en que solicita se done para labor un citio yermo que hay en el Manzano, dentro de los limites del Ojo de en Medio hasta la Rancheria; y visto el informe del R. Ayuntamiento de Tomé donde se manifiesta no haver obstaculo para la consecion del dho. terreno. Se mandó donar.

Se dió cuenta con una solicitud del C. Juan Cristoval Muñiz vecino de Jemez en que solicita para labor un Terreno ariaso que se haya dentro de los limites del Vallecito, y las tierras de dho. Pueblo. Se mandó pasar á informe al Ayuntamiento de dho. Jemes.

Se dio cuenta con un informe que dá el Ayuntamiento de Cochiti sobre la solicitud que hace el C. Agustin Duran en union de otros individuos de esta ciudad, solicitando se les done para labor un citio valdio que se haya entre las tierras de Santo Domingo y San Felipe.

Se mandó pasar á informe al Ayuntamiento de Sandia, á cuya
61 jurisdiccion pertenese al espresado Pueblo de San Felipe.

Se dió cuenta con un Presupuesto de gastos de utencilios hechos para la escuela publica de Taos, presentado por el Sor Martinez, é importante de Quarenta ps. dos rrs; y haviendose librado veinte y sinco ps. en las seciones anteriores, se le mandaron reintegrar Quince ps. dos rrs. que resultan faltando para el completo pago de la monta de dho presupuesto.

La comicion encargada de la manifestacion del Sor. Martinez presentada en la Secion antecedente dió cuenta con su dictamen, y puesto á discucion los dos articulos que comprende fueron aprovados. Se levantó la Secion.

SANTIAGO ABREU, *Presid^te^.* [SCROLL.]
AN^TO^. JOSÉ MARTINEZ. [SCROLL.]
TEODOZIO QUINTANA. [SCROLL.]
JUAN RAFAEL ORTIZ. [SCROLL.]
JOSÉ MAN^L^. SALAZAR. [SCROLL.]
RAMON ABREU, *Srio.* [SCROLL.]

62 *Territorial Deputation.*

Translation — session of the 12th day of November, 1831.

The foregoing journal was read and approved. There was taken under consideration a petition of the citizen Nerio Antonio Montoya, resident of Valencia, in which he asks that he be donated for cultivation an uncultivated tract which is at Manzano, within the limits of the Ojo de en Medio, as far as the rancheria; and the report of the ayuntamiento of Tome having been examined, in which it is shown that there is no objection to the granting of the said land, it was ordered to be donated.

There was taken under consideration a petition of the citizen Juan Cristoval Muniz, resident of Jemez, in which he asks for cultivation a tract of unbroken land which is within the limits of the vallecito and the lands of said pueblo. It was ordered to be referred for report to the ayuntamiento of Jemez.

There was taken under consideration a report made by the ayuntamiento of Cochiti upon the petition made by citizen Agustin Duran, in union with other individuals of this city, requesting that there be donated to them for cultivation a vacant tract which is found between the lands of Santo Domingo and San Felipe. It was ordered to be referred for report to the ayuntamiento of Sandia, to whose jurisdiction the said pueblo of San Felipe belongs.

There was taken under consideration an estimate of the expenses for supplies for the public school at Taos, presented by Mr. Martinez, and amounting to forty dollars and two reals: and twenty-five dollars having been appropriated at previous sessions, it was ordered that it be reimbursed to the amount of fifteen fiollars and two reals, which are lacking, to complete the payment of the amount of said estimate.

The committee having in charge the memorial which Mr. Martinez presented at the preceding session reported its decision, and the two articles which it comprises were approved.

The session was adjourned.

62½ SANTIAGO ABREU, *President.* [SCROLL.]
ANTONIO JOSE MARTINEZ. [SCROLL.]
FEODORIO QUINTANA. [SCROLL.]
JUAN RAFAEL ORTIZ. [SCROLL.]
JOSE MANUEL SALAZAR. [SCROLL.]
RAMON ABREU, *Secretary.* [SCROLL.]

63 UNITED STATES OF AMERICA, *Territory of New Mexico*, } *ss:*

In the Court of Private Land Claims.

Between—

ELOISA L. BERGERE, Petitioner,
and
THE UNITED STATES *et al.*, Respondents. } Final Decree.

This cause having heretofore been heard upon the pleadings and exhibits filed and upon proofs taken—full legal proof having been taken—and counsel having been heard for the said parties, and the petition in this cause having been sustained by satisfactory proofs, after due deliberation, the court being now sufficiently advised in the premises, makes the following finding of facts:

First. That on February 4, 1819, Bartolome Baca presented a petition to the then governor of the province of New Mexico, Facundo Melgares, setting forth that he had registered a piece of vacant *piece of* land, which was called the Torreon; that the said governor made the said grant as petitioned for on July 2, 1819, and directed Jose Garcia de la Mora to give the possession, designating the limits and officiating duly; that afterwards, to wit, on September 12, 1819, the said official gave to the said Bartolome Baca the actual possession of the said tract of land, called the Torreon, petitioned for.

Second. That the said tract of land called the Torreon had been in the actual possession of Bartolome Baca for more than four years from the date of the grant on said September 12, 1819.

Third. That the said petitioner *who* filed her petition for herself and other heirs of Manuel Antonio Otero and Miguel Antonio Otero and the legal successors in interest to the rights of the said heirs of the said Bartolome Baca.

The court finds as a matter of law that the grant to said Bartolome Baca was imperfect at the time of the cession of the department of New Mexico to the United States by the treaty of Guadalupe Hidalgo, and that the petitioner, for herself and the other heirs
64 of Manuel Antonio Otero and Miguel Antonio Otero, as the legal representatives of the said Bartolome Baca, is entitled to confirmation for eleven square leagues of land within the outboundaries of the tract of land called the Torreon, granted to said Baca and of which he was put in actual possession.

It is therefore ordered, adjudged, and decreed by this court that the claim of the petitioner for the land hereinbefore described and set out be, and the same is hereby, confirmed to the extent of eleven square leagues to the heirs and legal representatives of Bartolome Baca, provided that this confirmation shall not confer any right or title to any gold, silver, or quicksilver mines or minerals of the same.

THOMAS C. FULLER,
Associate Justice.

65 And afterwards, to wit, on the twenty-first day of said term, the same being the twenty-fifth day of March, 1896, the following, among other, proceedings were had, to wit:

66 In the Court of Private Land Claims, Santa Fé District, March Term, 1896.

J. FRANCISCO CHAVEZ *vs.* UNITED STATES. } No. 20. "Nerio Antonio Montoya Grant."

This cause having been heretofore tried and submitted to the court at a former day of the present term upon the pleadings and exhibits on file and upon the proofs, both oral and documentary, taken in open court, the court, being now sufficiently advised in the premises, finds that the claim of petitioner is not entitled to confirmation, and that the title by him asserted and claimed to the tract of land known as the "Nerio Antonio Montoya," situated in the county of Valencia and Territory of New Mexico, under a grant alleged to have been made by the territorial deputation of New Mexico to Nerio Antonio Montoya in the year 1831, is of no validity, and that the said grant so alleged is not such a one as the United States are bound to recognize and confirm under the treaties of cession by Mexico to the United States.

It is therefore ordered, adjudged, and decreed that the said claim to the tract of land known as the "Nerio Antonio Montoya" under the said alleged grant is rejected and the said petition dismissed.

JOSEPH R. REED,
Chief Justice.

67 And afterwards, to wit, on the day and year last aforesaid, there was filed in the office of said clerk an opinion of said court; which opinion was and is in the words and figures following, to wit:

68 In the Court of Private Land Claims, Santa Fé District, March Term, 1896.

J. FRANCISCO CHAVES *versus* UNITED STATES. } No. 20. "Nerio Antonio Montoya Grant."

Opinion of the Court, Rendered by Joseph R. Reed, Chief Justice, in Open Court, on March 25th, 1896, at Ten o'clock A. M.

In this case we hold that the departmental assembly or territorial deputation had no power or authority to make a grant of lands at the time this grant was attempted to be made, and the fact that the governor may have presided at the meeting at the time the action was taken makes no difference, as the power to make the grant was exclusively in the governor, and the territorial deputation had no jurisdiction in the matter. The claim is rejected, and that will be the order.

JOSEPH R. REED,
Chief Justice.

Santa Fé, New Mexico, March 25th, 1896.

69 UNITED STATES OF AMERICA, } ss:
Territory of New Mexico, }

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing 68 pages contain a full, true, and perfect transcript of all the papers, pleadings, record entries of proceedings, and evidence in the cause lately pending in said court, wherein J. Francisco Chaves was petitioner and the United States was defendant.

Seal Court of Private Land Claims, Santa Fé, New Mexico.

Witness my hand and the seal of said court, at Santa Fé, New Mexico, this 14th day of November, A. D. 1896.

JAMES H. REEDER,
Clerk C. P. L. C.,
By IRENEO L. CHAVES, *Deputy.*

Endorsed on cover: Case No. 16,550. Court of private land claims. Term No., 346. J. Francisco Chavez, appellant, *vs.* The United States. Filed April 5th, 1897.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

J. FRANCISCO CHAVEZ
vs.
UNITED STATES. } No. 88.

It is hereby stipulated and agreed that the additional transcript showing the application for and allowance of an appeal from the decree of the court of private land claims in the above-entitled cause, which additional transcript was made and certified by the clerk of the court of private land claims on the fourth day of October, 1898, and has been by him sent to the clerk of this court, may be filed by the clerk in this case, and shall be taken and considered as a part of the record herein the same as though it had been included in the transcript originally sent up, from which it was omitted by accident or inadvertence.

F. W. CLANCY,
Solicitor for Appellant.
MATT. G. REYNOLDS,
Special Assistant to the Attorney General.

Be it remembered that heretofore, to wit, on the 22nd day of September, 1896, there was duly filed in my office as clerk of the court of private land claims a petition for an appeal to the Supreme Court in the words and figures as follows, to wit:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico.

J. FRANCISCO CHAVEZ
vs.
UNITED STATES. }

Now comes the said petitioner, by his solicitor, Frank W. Clancy, Esq., and prays that an appeal be granted him from the decree of this court to the Supreme Court of the United States.

FRANK W. CLANCY,
Solicitor for Petitioner.

(Endorsed:) C. N-. 20. F. No. 18. J. Francisco Chavez *vs.* United States. Application for an appeal. Filed Sep. 22, 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

And be it further remembered that, to wit, on said 22nd day of September, 1896, there was duly filed an order granting an appeal to the Supreme Court of the United States from the decree of said court of private land claims, in a certain cause lately pending therein,

wherein J. Francisco Chavez was plaintiff and The United States of America was defendant; which said order was and is in the words and figures following, to wit:

In the Court of Private Land Claims, Sitting in the Territory of New Mexico.

J. FRANCISCO CHAVEZ
vs.
UNITED STATES.

Upon *and* reading and filing the application of said petitioner for an appeal from the decree of this court to the Supreme Court of the United States, and it appearing that said petitioner is entitled as of right to take such appeal under the act of Congress creating this court, it is ordered that the said petitioner, J. Francisco Chavez, be, and he hereby is, granted an appeal from the said decree of this court in this cause to the Supreme Court of the United States.

WILBUR F. STONE,
Associate Justice.

September 21st, 1896.

(Endorsed:) C. No. 20. J. Francisco Chavez *vs.* United States. Allowance of appeal. Filed September 22nd, 1896. James H. Reeder, clerk, by Ireneo L. Chaves, deputy.

I, James H. Reeder, clerk of the court of private land claims, do hereby certify that the foregoing pages contain a full, true, and perfect copy of the application and allowance of appeal in the above-entitled cause as the same appear of record and on file in my office.

Witness my hand and the seal of said court, at my office, in Santa Fé, New Mexico, this fourth day of October, A. D. 1898.

[Seal Court of Private Land Claims, Santa Fé, New Mexico.]

JAMES H. REEDER, *Clerk,*
By IRENEO L. CHAVES, *Deputy.*

[Endorsed:] Case No. 16,550. Supreme Court U. S., October term, 1898. Term No., 88. J. Francisco Chavez, app't, *vs.* The United States. Stipulation and addition to record. Office Supreme Court U. S. Filed Oct. 11, 1898. James H. McKenney, clerk.

SUPREME COURT

OF THE

UNITED STATES.

OCTOBER TERM, A. D. 1898.

J. FRANCISCO CHAVEZ, *Appellant*,
vs.
UNITED STATES. } No. 88.

STATEMENT OF CASE.

The appellant filed his petition in the Court of Private Land Claims in 1892 asking for the confirmation of his claim for a grant of land situate in Valencia County, New Mexico, east of the Manzano Mountains and near the confirmed grant of the town of Torreon, containing about 5,000 acres. The record shows that Nerio Antonio Montoya addressed a petition to the ayuntamiento of the town of Tome asking that body to recommend to the territorial deputation that he be given the land in question; on the 19th of March, 1831, the ayuntamiento recom-

mended to the deputation that the donation of the land prayed for should be made; on the 12th day of November, 1831, the territorial deputation, with the consent and participation of the acting governor and political chief of the territory, who presided over its deliberations, granted the land prayed for, and directed the alcalde of the proper jurisdiction to execute the proper document to secure to the grantee the land granted. It further appears that, on the 7th of December, 1831, the alcalde of the jurisdiction of Tome executed a document showing the presentation to the ayuntamiento of the order of the deputation, and expressing his readiness to put the grantee in possession as soon as he might be notified to do so, and on the 12th of December, 1831, the alcalde delivered possession of the land and executed a formal act of juridical possession.

On the 22nd of December, 1831, the governor and political chief of New Mexico wrote a letter to the alcalde in answer to a communication from him in which he informed the governor of his having executed the decree of the deputation and inquired as to how much his fees should be. A translation of this letter will be found on page 9 of the printed record.

Upon the evidence submitted, no question can be made as to the grantee having gone into possession and so remaining until he turned the property over to the father of petitioner on account of a debt due to petitioner's grandfather, or as to petitioner having succeeded by various mesne conveyances to all of the rights of the original grantee.

No question is made as to the genuineness of any of the documents submitted or the facts as stated. The only question before this court for consideration is as to whether a grant made by order of the territorial deputation of New Mexico in 1832, with the par-

ticipation of the political chief, conveyed any title to the grantee.

By reference to the opinion of the Court of Private Land Claims, which appears on page 40 of the printed record, it will be seen that the claim was rejected solely on the ground that the departmental assembly or territorial deputation had no power or authority to make a grant of lands at the time this grant was made, and that the fact that the governor may have presided at the meeting at the time the action was taken makes no difference, as the power to make the grant was exclusively in the governor.

It is evident that this opinion is based upon the supposed authority of *United States vs. Vigil, 13 Wallace, 449.* The appellant claims that the question of lack of power in the territorial deputation was not necessary to the decision of the case of *United States vs. Vigil* and that such expressions as are used in that case with regard to this question do not constitute a precedent binding on the court in the present case, where the only possible point of dispute is as to the power of the deputation.

The appellant has made the following

ASSIGNMENT OF ERRORS.

J. Francisco Chavez,
Appellant,
vs.
United States.

No. 88.

Now comes the said appellant by his solicitor and says to the court here that there is manifest error in the record and decree of this cause, and he specifies the following as errors herein:

1. The court below erred in holding that the claim of petitioner was not entitled to confirmation.

2. The court below erred in holding that the title asserted by appellant to the tract of land known as the Nerio Antonio Montoya grant was of no validity.

3. The court below erred in holding that the said Nerio Antonio Montoya grant was not such as the United States are bound to recognize and confirm under the treaties of cession by Mexico to the United States.

4. The court below erred in rejecting the said claim to the said tract of land and in dismissing the petition of appellant.

5. The court below erred in holding that the territorial deputation had no power or authority to make a grant of lands at the time the said grant was made.

6. The court below erred in holding that the power to make the grant was exclusively in the governor.

Wherefore appellant prays that the decree of the court below be reversed, vacated and set aside and that a decree of confirmation of his claim be entered in this court, or that such other order and decree be made as to this court shall seem proper.

F. W. CLANCY,

Solicitor for Appellant.

POINTS AND AUTHORITIES.

I.

The territorial deputation had lawful power and authority to make the grant to Montoya.

It is obvious that this proposition is essential to the validity of appellant's claim, and in order to establish it he must necessarily discuss the effect of the decision of this court in the case of *United States vs. Vigil.*

It is here suggested that the decision of the question as to the power of the departmental assembly was not absolutely necessary to the rejection of the claim in the Vigil case. The court declares that the grant in that case was invalid because it violated the fundamental rule on which the right of donation was placed by law, "the essential element of colonization" being absent, and the number of acres granted being "enormously in excess of the maximum quantity grantable under the law."

The argument by which in the present case it is sought to uphold the claim of appellant is that the regulations of 1828 which provided that the governor should exercise the power to grant lands, are mere executive regulations created by the act of the President of the Republic and are not to be regarded like the provisions of the colonization law of 1824, which was the act of the Congress itself and against which no presumption can be entertained in favor of the validity of acts in contravention of its provisions; that, being mere regulations of this character, when we find official acts not in accordance therewith, there is room for the application of the well-established doctrine of presumption in favor of the regularity and validity of such acts; and, that, in New Mexico, not only in this particular case, but in nearly all other cases of grants of land between 1828 and 1846, the uniform course of proceeding was like that in the present case, the grants being made by the deputation or assembly of New Mexico. The exceptions are to be found in the acts of Governor Manuel Armijo, who made a number of grants during the latter part of his

career without the slightest regard to the restrictions of the law of 1824 and without any attention to the requirements of the regulations of 1828. His conduct was so much beyond the limitations imposed by law that in at least two cases surveyors-general of New Mexico, in reporting favorably upon his grants, declare that he was posessed of extraordinary and unlimited powers.

Vigil and St. Vrain grant, Report 457, H. R. 35th Cong, 1st. Sess.,p. 278.

Nolan grant, Ex. Doc. No. 28, H. R. 36th Cong., 2nd Sess., p. 18.

"Where the act done is contrary to the written order of the King, produced at the trial, without any explanation, it shall be presumed that the power has not been exceeded; that the act was done on the motives set out therein, and according to some order known to the King and his officers, though not to his subjects (*7 Peters 96; 8 Peters, 447, 451, 454, 456*) and courts ought to require very full proof that he has transcended his powers before they so determine it. (*8 Pet., 464; 9 Pet., 734*).

Strother vs. Lucas, 12 Pet, 438,

See also

U. S. vs. Percheman, 7 Pet., 95.

Delassus vs. U. S., 9 Pet., 134.

U. S. vs. Clark, 8 Pet., 451.

There is certainly something analogous to the written order of the King in the executive regulations in 1828 The law of 1824 had committed the subject of making such regulations to the executive department, and there was no reason why such regulations might not be changed, modified or superseded by others at the will of the executive. When we find that for

nearly eighteen years and under not less than thirteen different governors, the almost uniform course of proceeding was not in accordance with those regulations, certainly the doctrine of this court, announced in the case of *Strother vs. Lucas* should be held to apply, and it should be presumed the acts were done in accordance to some order known to the President and his subordinates though not to other citizens.

That this statement of the condition of things in New Mexico is correct is something of which this court can properly take judicial notice. It is a historical fact, affecting the people of a very large portion of our country, and not one as to which evidence should be required. To have put in evidence in the present case the archives and records of the Mexican government so far as they have been preserved in New Mexico, for the purpose of showing what is here asserted, would impose a grievous burden on the claimant and one that is totally unnecessary. It is proposed in this brief to set out a summary of a portion of those archives and records in order to inform the court as to the conditions prevailing in New Mexico during the period specified, and it is anticipated that the learned special counsel for the government will concede, or, at least, not dispute, the correctness of the statements.

No such attempt as this would be made if it appeared that these conditions had ever before been brought to the attention of this court The present case does not involve a large amount of land, but the questions raised upon this appeal are of importance, not only to the appellant in this case, but to claimants in a number of other cases.

The following are summaries of the contents of archives and records to be found in the office of the

Surveyor-General at Santa Fe, New Mexico, and are submitted for the information of the court:

Archive 812, dated November 8, 1830, is the report of a committee of the most excellent deputation on the petition of Jose Guadalupe Romero and Manuel Bustamente asking for the *sitio* of La Gotera, at Galisteo. From the report it appears that the land had been previously given to other persons by a former deputation, and the report then declares that "no queda duda de que estubo en las atribuciones de la Exma Diputacion donar el precitado terreno a los qe actualmente lo poseen, y por lo mismo no es de los deveres de la actual entremeterse en la que el anterior hizo devidamente." This may be translated that "there is no doubt that it was within the powers of the most excellent deputation to donate the said land to those who now hold it, and therefore it is not among the duties of the present deputation to interfere with what the former deputation properly did."

Archive 901, dated April 9, 1845, is the petition of Pedro Alcantar Vigil, for himself and others, asking for land between Las Vegas and Mora, and is addressed to the governor. Then follows a reference of the petition by the departmental assembly to the prefects of the first and second districts for reports, which is signed Felipe Sena, Presidte., and Tomas Ortiz, Srio. After this appears the following: "Cumplase con el anterior decreto de la E. Asamblea. Martinez;" which is, in effect, "Let the foregoing decree of the excellent assembly be complied with. Martinez."

Martinez was the governor. Then follow several reports from different officials as to the propriety of granting the petition, and

finally a report of the committee of the Assembly, dated June 27, 1845, recommending the grant of land on certain conditions, and after that report appears the following:

"Queda aprobado en todos sus partes el "precente dictamen.

"Sala de Seciones de la Exma Asamblea, Junio 27 de 1845.

"Jose Chavez, Tomas Ortiz."

The substance of this is that "the present report remains in all parts approved."

After this, under date of July 2, 1845, appears the formal order or decree of the Assembly in accordance with the recommendation of the committee.

Archive 918 contains reports of committees and the decree of the Assembly upon a petition for lands at Sapello, as follows:

First, a letter from a committee, dated December 23, 1844, signed Jose Chavez and Santiago Martinez, asking the Secretary of the government, Bernardo V. Franco, for a copy of the decree of the Supreme Government forbidding foreigners to acquire lands. This begins by describing the committee as appointed this day by the "Most Excellent Senor Governor as President of the honorable Assembly."

Second, a very long report, dated January 2, 1845, signed the same as the letter, reviewing the subject at great length and recommending that the land called Sapello should not be conceded to the foreigners unless they could show express license from the Supreme Government, and that the Mexicans should not have the land until they might ask it in conformity with the laws of the nation.

Third, under date of January 3, 1845, is a letter from the Assembly to the Governor, announcing that it had decided the matter on January 2, 1845, in accordance with the report of the committee, and returning the original documents to be given to the parties in interest.

Archive 920 is a letter to the Governor from the Departmental Assembly, dated January 27, 1845, in which it is declared that the Assembly had resolved that in no way could the lands of the Sapello be given to the naturalized persons who ask it because that was reserved to the Supreme Government. This copy is signed J. Manuel Gallegos and Tomas Ortiz.

These archives 918 and 920 refer to what is now known as the Scolly grant, which was actually granted by Governor Armijo, March 27, 1843. Possession was not taken under this, and these proceedings were undoubtedly while Armijo was out of office. Having returned to office, he again granted the land, notwithstanding the action of the Assembly, as will appear by reference to Report No. 457, House of Representatives, 35th Congress, 1st Session, at pages 169 and 172.

Archive 921, dated July 27, 1845, contains the petition of John Scolly, for himself and others, addressed to the Governor, reciting former attempts to get land in December of the previous year, and casting injurious reflections on the administration of Martinez, from whom it was impossible to get justice, but, under the truly fraternal government which then existed, he renewed his application for the lands at the Junta de los Rios.

The Governor, on the 7th of August, 1845, put on this petition the following order of reference: "Pase esta instancia al concocimiento de la Exma Asamblea para la resolucion que a bien tenga dictar en el particular." This may be freely translated, "Let this petition be brought to the attention of the most excellent assembly for the determination of what ought to be done about the matter."

Archive 1,103 is a report, dated July 19, 1832, of a committee of the deputation on the petition of Manuel Martinez of Abiquiu and his eight sons and others for land on the Chama river at Tierra Amarilla. The committee recommends the giving of the land asked for under certain conditions subject to the deliberations of the Deputation, and is signed Martinez, Tenorio, and Ortiz.

Archive 1,125 is a "Borrador" of decrees of the Departmental Assembly of New Mexico made in January, February, and March, 1846, and contains four of such decrees:

First, under date of January 10, 1846, a decree granting to Antonio Jose Ribera and Juan Bautista Vigil y Alarid the land necessary at the place known as the Jornada del Muerto in order to open wells and to make a plantation (siembra) and prohibiting the foreigner, Miguel Hauk, from having any part in the concession, because Article 9, of the law of March 11, 1842, prohibited him from acquiring lands without the previous consent of the Supreme Government. This is the grant, the papers relating to which appear at pages 91 to 1 8, of executive document No. 14, House of Representatives, 36th Congress, 1st Session, and is the same claim passed upon in the case of *United States vs. Vigil, 14 Wallace, 449.*

Second, a decree of February 12, 1846, as to the establishment of offices at Taos.

Third, a decree of March 10, 1846, exempting Francisco Ortiz y Delgado for two years from the payment of taxes levied by the ayuntamiento of Santa Fe.

Fourth, a decree of the same date by which it is declared that there is granted to the individuals noted in the list which accompanied the previous presentation, the land which each one needs for planting at the place commonly known as Chaperito, with the addition of half a league *en contorno* which will serve for *egidos* to the settlement, and this concession shall be enjoyed by all other persons who successively may go to join themselves to it. The persons interested in this decree may go to the proper justice of the demarcation that he may make the division of the said lands.

Archive 1,142 is a letter under date of July 7, 1845, from the Departmental Assembly to the Governor, setting out its order of June 2[illegible], 1845, revoking its decree granting a league of land at the Ojo de la Cabra to Juan Otero, because the land belonged to the Indians of Isleta.

Archive 1174 consists of five sheets of four pages each, detached from their context, and are parts of the proceedings of the Departmental Assembly in 1845. It is probable that the remainder of the book to which they belong has been destroyed, or possibly no book being available at the time, the record of proceedings was kept on loose sheets, a portion of which has been lost or destroyed. The folios are numbered 7, 8, 9, 10, 38, 39, 40, 41, 42 and 43.

Attention will be called only to those things which relate to the granting of land.

Folios 7 and 8 contain the record of the discussion on the 23d of January, 1845, of the petition of the naturalized "Escol" and associates, it being finally decided to ask the Governor for information as to the certificates of naturalization which the petitioners ought to have. This clearly is the same matter as that referred to in Archives 918 and 920.

In folio 8, under date of January 28, 1845, the record shows receipt of a communication from the Governor relative to certificates of naturalization of the Sapello petitioners, and further discussion relative to the petition. The President expressed the opinion that it appeared very reasonable to give the land which was asked on account of the great good which would result to the Department, but if this should be done in this way by this "*junta*," it would be an infringement of the laws on the subject, and that it appeared that the concession ought not to be made by this body, because not within its powers, and that the petitioners ought to present themselves to the Supreme Government of the nation, which is the sole depository of such power; and after some discussion the views of the President prevailed and were adopted.

Folio 38 contains an order to send a communication to the Governor asking him to require the return by Juan Otero within eight days of the original documents relating to the petition which he made for the land at the Ojo de la Cabra.

It also contained the appointment of a committee on the application of Pedro Alcantar Vigil. As to this, see archive No. 901.

Folios 40 and 41, under date of June 26, 1845, contain the record of a discussion about Juan Otero and the Ojo de la Cabra, and the decision of the Assembly to require

the return of the documents, and that the prefect Sarracino should be punished for having made false reports.

Folio 42, of the same date, contains proceedings upon the petition for land at Sapello and Manuelitas and reports submitted, and a decree substantially the same as that set out in archive No. 901.

Archive 220 is the report of a committee of the Excellent Deputation, dated November 10, 1830, on the petition of Samuel Chambers, relative to forming a new settlement on the Rio del Ponil. The report recommends a decree setting out that when the territory could have an army sufficient to protect against the incursions of the savages, the petitioner might again present his petition, the Excellent Deputation not consenting to the formation of any new settlement until that time arrives. The report sets out the great danger from making settlements in exposed situations, and cites in corroboration the extermination of the settlement of Lo de Mora and of the settlement of Anton Chico. This is signed Abreu, Quintana and Baca y Campos.

Archive 287 contains the petition of a number of citizens headed by Rafael Fernandez, for the land on the Rio de Picuries. On the margin is written an order of the Excellent Deputation dated March 7, 1829. directing the Ayuntamiento to make report, which is signed Abreu, Secretary.

Archive 396 is a report, dated July 18, 1832, of a committee of the Deputation, recommending that the grant be made of land on the Rio de Picuries. In case No. 65 on the docket of the Court of Private Land Claims is to be found the original act of

juridical possession, which recites that this grant had been made by the Deputation.

Archive 1,300, dated November 9, 1830, appears to be a draft or retained copy of a committee report which, completed and signed, is to be found in Archive 812.

Archive 1,309 is a draft or retained copy of an official letter, unsigned, but evidently from the Governor, addressed to the Alcalde del Bado. It is dated March 24, 1835. Substantially the same letter is to be found at pages 18 and 19, of Ex. Doc. No. 14, House of Representatives, 36th Congress, 1st Session, as a part of the papers relating to the grant of Las Vegas. The completed letter is there to be found signed by the Governor, and is in the same language as this archive, except that the decree of the Deputation is repeated twice over. This archive begins with the words, "En representacion de los vecinos del Bado, Juan de Dios Maese," and continues the same from that point down to the end, and as it appears on page 19 of said executive document, omitting only the words, "Ramon Abreu, Secretario." Attention is called to this archive and the completed letter as showing the distinct assertion by the Territorial Deputation of its power to make the grant and the acquiescence of Governor Sarracino, giving orders, as he does, to the Alcalde to put the grantees in possession. It is to be noted also that the alcalde in giving possession, as appears on page 20 of said Executive Document, professes to act in accordance with the law of colonization relative to concessions of vacant land, also observing scrupulously what was ordered by the Territorial Deputation in its decree of the 23rd of March, 1835, and the order of the political chief Francisco Sarracino.

Archive 142 is a report dated June 15, 1829, made by the Alcalde del Bado to the most Excellent Deputation in obedience to an order of the Deputation made June 4, 1829, and communicated by the Secretary to the Alcalde, as to the petition of Tomas Baca and others for land

Archive 143 is the petition of Tomas Baca and others for lands, presumably the one referred to in Archive 142, addressed to the Ayuntamiento of San Miguel del Vado, and dated April 21, 1829; and following the petition is a reference of it to the Deputation by the ayuntamiento on April 27, 1829.

Archive 219, dated May 2, 1829, is a communication from Ramon Abreu as Secretary of the Territorial Deputation, to the Governor, setting out a copy of the decree of the Deputation on the petition of residents of the Canada for land near Picuries, and after that copy the letter closes with these words: "y para los demas tramites de estilo la comunico a V. S. de orden de S. E."; or in English, "and in order that the further necessary formalities be complied with, I communicate this to your lordship by order of its excellency."

This evidently refers to the same matter as Archive 287.

Archive 255 contains a petition dated April 14, 1831, by Augustin Duran and others to the Excellent Deputation for land between the pueblos of San Domingo and San Felipe. On the margin appear orders of the Deputation signed by Abreu, Secretary, calling for reports from the Ayuntamientos of Cochiti and Sandia. Then follow the reports, one from Cochiti and the other from Sandia.

Archive 269 is a petition dated February 12th, 1839, by Pedro Buen-Amigo Esperanza, a naturalized citizen, addressed to the Deputation, asking for land at a place called Shapellote.

Archive 392, dated June 6, 1829, is the report of a committee of the Excellent Deputation on the petition of the citizen, Miguel Garcia, and the citizens of the United States of North America, Julian Gorden and Jose Manuel Copas, asking to be allowed to colonize the Rio de la Culebra. The report was adverse on the ground that the petition lacked necessary requisites, but the committee did not state what those necessary requisites were. The report made a recommendation that the petition be returned to the political chief in order that it might be made in conformity to law and the general rules of the Supreme Government.

Archive 801 contains a letter dated February 22, 1842, from the Prefect, Juan Andres Archuleta, to the Secretary of the Government, Guadalupe Miranda, stating that he had given and granted a tract of land to sixty individuals on the Rio Colorado near Taos, but that he had received a letter from the Governor, dated September 6th, 1841, directing him to return the petition to the applicants, stating that it was inadmissible; but that he, as Prefect, claimed that the granting of land was one of his powers. Then follows a draft or retained copy of the answer of the Secretary to the Prefect, in which he states that, having reported the matter to the Governor, the latter had instructed him to inform the Prefect that the granting or refusing of lands for colonization was peculiar to the Departmental Assembly, but he directed that the parties in possession might remain subject to the action that might be taken by the Excellent Assembly when it convenes.

Archive 1013, dated November 28th, 1829, is the report of a committee of the Excellent Deputation on the petition of Jose Manuel Trujillo and others, settlers at Manzano, to the number of 67. The report is favorable, with a limit to one league in each direction. This report is signed Sarracino, Baca, Cabeza de Baca.

Archive 1305, dated July 20th, 1833, is a petition to the Territorial Deputation by Mariano Sanchez, asking that the Ojo Sarco be partitioned among twenty-five individuals.

Archive 1322, dated December 22, 1844, is a letter from Governor Mariano Martinez to the President of the Departmental Assembly. The Governor states that he has the honor to transmit the petition which a number of citizens have presented to him relative to the possession of the lands of Sapello and Mora on the Rio Colorado, which has been reported by the Prefectura of this district, and he expresses the hope that the President will be pleased to report the matter to the Most Excellent Assembly.

This is probably the Scolly petition referred to in Archives 918, 920 and 921.

In the journal of the Provincial Deputation which covers the period from 1828 to 1837, on the second page of folio 22, at the session of February 9, 1829, appears the record of the consideration of the petition of Rafael

Sanchez, in union with several other persons, asking lands at San Jose, adjoining the Pueblo of Acoma. It was ordered that the Constitutional Alcalde of Laguna, acting with the Ayuntamiento, should examine if the sitio asked for is free and not acquired by any person, and to examine also if the water which must serve the land asked for is independent from that with which the natives of Laguna and Acoma irrigate, and, there being no obstacle of this nature, to give possession to those who ask the land.

On the first page of folio 67 of the same book, August 4, 1831, is the record of a committee having reported on the petition of Juan Cruz Aragon and Felipe Gonzales as to the foundation of a new settlement on the Rio de los Conejos; and after some discussion the three articles set out in the report were approved, with an additional order that a copy of the report (dictamen) should be sent in order that all the conditions which are set out in it should be carried into effect.

The first signature to this record is Jose Antonio Chavez.

Book of the proceedings of the Provincial Deputation 1828–1837. On the first page of folio 63, under date of April 14, 1831, the record shows that the Deputation ordered that the request of Agn. Duran and twelve others, for land between the Pueblos of Santo Domingo and San Felipe, of about three thousand varas, be referred to the Ayuntamientos of Cochiti and Sandia for reports.

The first signature to the proceedings is Jose Anto. Chavez.

On the second page of folio sixty-eight of the same book, under date of November 11, 1831, the record shows that the Deputation took up the report of the ayuntamiento of El Bado, made in consequence of a petition by persons of that jurisdiction, asking that there be given them for cultivation the land known by the name of El Macho, which report says that there is no obstacle to the donation which is asked; and thereupon the concession was ordered. The first signature to this record is Jose Antonio Chavez

On the first page of folio 74 of the same book, under date of April 28, 1832, appears the record of an order that the President be empowered extraordinarily to settle the matter of the application of the foreigner, Pratt, which was read at the session of the 26th of April. The first signature to this day's record is Santiago Abreu, President.

At the previous session of the 26th of April, on the second page of folio 72, it appears that George Pratt, citizen of the United States, had petitioned for sufficient land for the term of thirty years upon which to establish a saw mill in the Canon at the place called the Corral Viejo, and it was ordered that the ayuntamiento of this city report thereon. The first signature to this day's record is Santiago Abreu, President.

On the second page of folio 76 of the same book, under date of July 18, 1832, the record shows that the Deputation took up the report of the committee on the petition of the Citizen Rafael Gonzales and associates, who asked possession of land for cultivation on the banks of the Rio de Picuries; and the five articles of the report were discussed and afterwards approved.

On the same page and date was taken up the petition of Antonio Sandoval, asking that there be given him for pastures the lands which lie between the Ojo Ediondo as far as the Cañoncito, and reports were ordered from the Constitutional Ayuntamiento of Laguna.

This day's record is signed Santiago Abreu, President.

On the second page of folio 77 of the same book, under date of July 19, 1832, the record shows that there was taken up the report of the committee to which had been referred the petition for lands made by Manuel Martinez and associates, which had been read at the session of the 17th inst., and after discussion the report was approved. This day's record is signed Santiago Abreu, President.

At the previous session of the 17th inst., at folios 75 and 76, there was taken up the petition of Manuel Martinez, asking possession of lands, in union with his eight sons and some other persons of the jurisdiction of Abiquiu, within the limits of the same, which was accompanied by the report of that Ayuntamiento, asked by the Deputation on the 25th of April last and the petition was referred to a committee of Martinez, Tenorio and Ortiz. This day's record is signed Santiago Abreu, President.

On the first page of folio seventy of the same book, under date of April 25th, 1832, record shows that the petition of Manuel Martinez was presented, in which he asks, for pastures and cultivation, a sitio on the banks of the Chama river known by the name of Tierra Amarilla, within the limits expressed in the petition; and it was ordered referred to the Ayuntamiento of Abiquiu for report.

On the first page of folio 70, April 25, 1832, was presented petition of Rafael Fernandez asking in union with twenty-two persons that they be given for cultivation the vacant lands at the Rio de Picuries on the east side. This was discussed and it appearing that the land asked for had been denied by the Deputation to the individuals who now asked it, after a long discussion it was agreed to postpone the subject until the following day.

On the first page of folio 81, March 5, 1833, the deputation took up the petition of Francisco Baca Ortiz, asking possession of land for cultivation near this city, known by the name of the Arco, which was referred to the ayuntamiento for report.

On page two of folio 81, March 5, 1833, report was presented from a committee to which had been referred the expediente of Abiquiu about lands, and, being discussed, it was approved. This day's record is signed Francisco Sarracino.

On the second page of folio 89, March 23, 1835, the record shows that the President presented the petition of residents of the jurisdiction of El Bado, made to that ayuntamiento, asking possession of land in the vacant lands known by the name of Las Vegas, and, being informed by the said ayuntamiento of there being no objection to the donation, and in consequence the formalities of the law being dispensed with, it was ordered that the possession of the land be conceded within the boundaries expressed in the petition, not only to those who petitioned, nor to the residents of El Bado, but generally to all who may not

be provided with land for cultivation, with notice that the grant of these lands is without prejudice to the common pastures and watering places; for all which the political chief will receive petitions which may be made, and will order provision made in conformity herewith.

This day's record is signed Francisco Sarracino.

At folios 95 and 96, January 5, 1836, there was taken up the report of the committee to which had been referred the petition of Francisco Ortiz and Domingo Campos, residents of San Ildefonso, to plant the Valles de Jaramillo de la Cueba. The report is adverse, but by its first article it is decided to give Ortiz one thousand varas square, and by its second article the same amount to Campos.

In the book of proceedings of the Departmental Assembly, Jan. 1 to August 10, 1846, on the second page of folio 36, in the first entry under date of May 1st, 1846, the record shows that the Assembly read the report of a committee appointed to prepare a statement to the Governor, in order that, through him, it should go to the supreme court of justice, relating to the order of the Supreme tribunal, Department of Chihuahua, upon the petition of Senor Juan Otero, relating to the land of Ojo de la Cabra; and said report being approved in full without debate, it was resolved to send a copy to the Governor and to file the original for future use.

The first signature to the proceedings is Ortiz.

In the same book, on page 2 of folio 27, Assembly read petition made by residents of

Nuestra Senora de Guadalupe de la Cuesta, asking lands for farming at Chaperito, which was taken up and, after slight debate, it was resolved unanimously to give to the individuals noted in the petition the lands which each one needs for cultivation, at the place commonly called Chaperito. This is the same decree as the one set out in archive 1125.

In the book of proceedings of the Departmental Assembly of 1845, on page 2 of folio 6, under date of June 17, 1845, the record shows that the Assembly took up the report of el Senor Prefecto, of the Third district, in compliance with the decree of the Assembly of March 27, current year, relative to the request of the Indians of Pueblo de la Isleta, Jesus M. Abeita and Domingo M. Chirina, to the Assembly; the said petition was read and considered and, after long debate, it was resolved to address a communication to his Excellency the Governor, that through him request be sent to Senor Don Juan Otero that he return the originals within eight days, as it was ordered by the Assembly, relative to the petition he presented for the lands of Ojo de la Cabra. Approved.

In the book of proceedings of the Departmental Assembly, January 1 to August 10, 1846, under date of January 10, 1846, on page two of folio five, the petition of Citizens Antonio Jose Rivera, Juan Bautista Vigil y Alarid and the foreigner, Miguel Hauk, asking for lands at the Jornada del Muerto, with object of settling, etc., was read and considered, and, after a long discussion it was ordered that there be granted Citizens Rivera and Vigil land "to open wells, and as much more as they may be able to cultivate, remaining without any right to the pastures" ("para

abrir norias y el mas que puedan cultivar, quedando sin dro alguno a los pastos"), excluding the said Hauk from this concession, the law of March 11, 1842, Art. 9, prohibiting him from acquiring lands in the frontier departments unless with permission of the supreme national government.

First signature to proceedings is Chavez.

In the book of proceedings of the Departmental Assembly for 1845, on the first page of folio 9, under date of June 26, 1845, the record shows there was taken up a communication from the government of the department which accompanies that which the Prefect of the Third district answers, and that which to the prefectura answered Don Juan Otero, relative to the order of this Assembly as to the documents which remain in his possession concerning the concession made him by the Assembly of the land called the Ojo de la Cabra. The record further shows that the subject of the grant to Juan Otero was discussed, and, after a long debate, participated in by a number of members, it was again ordered that Otero return the documents, and, notwithstanding their absence, that the grant be revoked which had been made of the Ojo de la Cabra, and at the same time that the Prefect be reprimanded for the contradictions which appear in his reports, and that this punishment be left to the discretion (*prudencia*) of the Governor.

In the book of proeeedings of the Provincial Deputation, 1828 to 1837, on the second page of folio 31, under date of June 4, 1829, the record shows that the Deputation took up the petition of Tomas Baca and Jose Antonio Cassados for land at a place known by the name of "Pajarito," and the report of the Ayuntamiento; and Mr. Pino said that he knew that the land asked had an owner, and

upon this statement he asked that the Deputation should base its action. Mr. Abreu took the floor, urging that through the Secretary there should be sent to the said Ayuntamiento, by way of its alcalde, notice that discussion had been had upon this, and asking, therefore, for a new report hereon, and upon that which said body gave declaring the land uncultivated and proper to be granted; and it was so ordered. The first signature is Jose Antonio Chaves.

A clear and definite decision as to the power of the territorial deputation was given in 1832 by an officer of the Mexican government whose profession and official position give his opinions great weight. In that year a controversy arose between certain citizens who had been by an alcalde put in possession of lands on the Gallina river, and certain other claimants of those lands. A complete record of the proceedings has been preserved and was filed in the Court of Private Land Claims in the case of *Rio Arriba Land and Cattle Company vs. United States*, which case was afterwards appealed to this court, and the record of the proceedings in 1832 is included in the transcript. The dispute having been brought to the attention of the Governor, he referred the matter to the *asesor general*, who was the licenciate Barreira. That officer required the parties to state their case by means of a set of pleadings, after which he sent his decision to the alcalde in whose court the case was pending, and made use of the following language:

> "The statements of the parties having been examined, the question is made clear, and it appears that the possession given by the alcalde, Jose Maria Ortiz, is of no value because even if he were an authority, he was not competent to give and partition lands, because this is an exclusive attribute of the

territorial deputation."

The alcalde followed the decision of the *asesor* as he was in law bound to do and this adjudication may be considered as made by the highest judicial authority existent in New Mexico at the time.

1 Diccionario de Escriche, Ed. of 1847, 352, title, Asesor.

A number of grants made between 1828 and 1846 have been reported to congress and the reports relative thereto printed as executive documents, and it is deemed advisable to refer to those cases as they appear in those documents instead of resorting to the originals in Santa Fe.

In the report of the Secretary of the Interior for the year 1856, at pages 484 to 493, will be found the record of the Tierra Amarilla grant. In this case Manuel Martinez addressed a petition to the political chief, and this petition was, by the political chief, Santiago Abreu, referred to the territorial deputation. That body called on the ayuntamiento of Abiquiu for a report. That body having reported favorably the deputation granted the land on the 20th of July, 1832. This claim has been confirmed by Congress.

The case of the San Pedro grant appears in report 457, House of Representatives, 35th Congress, first session, beginning at page 210. In that case possession of land was given by a prefect in 1839, but, as we have already seen, prefects had no power to make grants; and in 1845 Jose Serafin Ramirez, who was an officer of the government, having been employed as attorney by the settlers, petitioned the Governor for a revalidation or approval of the grant to be made in conjunction with the departmental assembly. On the 26th of November, 1845, the departmental assembly took up the petition and ordered that it be

returned to the Governor for the purpose which the settlers asked; and, on the 29th of November, the Governor, in this case Armijo himself, made an order approving and revalidating the grant pursuant to the consent given by the assembly. This will appear by reference to pages 215 and 226 of the report aforesaid. This grant has been confirmed by Congress.

In executive document number 14, House of Representatives, 36th Congress, first session, beginning at page 16, will be found the record of the grant of Las Vegas. The record is quite lengthy, but on page 28 will be found a translation of the action of the deputation making the grant and directing that the proceedings be forwarded to the political chief in order that he should execute what had been ordered by the deputation. On page 29 appears the order of the political chief, Francisco Sarracino, dated March 24, 1835, to the alcalde of El Bado, directing him to act in accordance with what had been ordered by the deputation.

In the same executive document, beginning at page 46, will be found the record of the Tajique grant. In this case the grantees petitioned the Governor for a tract of land at Tajique, and the Governor, on the 17th of March, 1834, made an order, which will be found on page 47 of this document, of which the following is a more literal translation than the one which appears at page 49:

"Santa Fe, March 17, 1834.—The constitutional alcalde of Valencia, to whose jurisdiction Tajique belongs, as I am informed, will make the division which is prayed for within the boundaries they ask, provided that no injury therefrom shall result to any third person, it being understood that when the

most excellent deputation reassembles it will confirm the possession, which this government now approves provisionally, in order that the planting time may not be delayed.

Sarracino."

It will be seen that Governor Sarracino did not undertake to make any grant, but only authorized a temporary possession until the matter could be brought before the deputation, which he clearly considered as the sole granting power. This grant has been confirmed by Congress.

In the same document, at page 65, begins the record of the Manzano grant. The settlers of Manzano petitioned the Ayuntamiento of Tome for a grant of the lands which they were then occupying. The Ayuntamiento sent this petition up to the Territorial Deputation with a favorable recommendation; on the 28th of November, 1829, the Territorial Deputation made a favorable decree, and on the 24rh of December the alcalde of Tome delivered possession of the lands. This grant has been confirmed by Congress.

At page 180 of the same document begins the record of the Mora grant. In this case there was no grant produced, but it was claimed that a grant had been made by Governor Perez on the 28th of September, 1835. There are indications in the papers, however, that the grant may have been made by the territorial deputation and an ~~an~~ order given by the Governor for the delivery of possession, as was done in several other cases. This view is strengthened by an examination of a receipt signed by Miguel Mascarenas, which appears on page 186 of the executive document aforesaid, in which the signer acknowledges having received from the former alcalde of the year 1835, a grant composed of four leaves, "which grant Manuel Antonio Sanchez delivered to us accompanied by an order of the political chief, Don Albino

Perez, dated October 10th." This indicates that the grant was one thing and the order of the Governor another. In view of the fact that it would have been a violation of the general custom, it is not likely that the Governor made any grant.

In executive document No. 28, House of Representatives, 36th Congress, 2nd Session, at pages 28 to 37, appears the record of the Canon del Agua grant. This grant was made to Jose Serafin Ramirez, first auditing officer of the departmental assembly and lieutenant of the auxiliary cavalry. He addressed his petition to the Governor and the Governor replied to him that he had laid the matter before the departmental assembly and that body had decreed that he and the other heirs of his grandfather had a right to the mine referred to in his petition, and further decreed that the Governor, in conformity with the colonization laws, should grant the land prayed for; and thereupon the Governor gave him the land and the revalidation of the title to the mine. This was done on the 13th of February, 1844. This grant has been confirmed by Congress.

In miscellaneous document No. 181, 42nd Congress, 2nd Session, at page 50, will be found the record of the Gotera grant. The petition is dated April 14th, 1830, and on the 1st of May of that year it was referred by the territorial deputation to the ayuntamiento of Santa Fe. That body appointed a committee to investigate and report. The committee having reported on the 12th of May, on the 17th of May the report was, by the ayuntamiento, sent to the political chief in order that he could lay it before the territorial deputation as approved by the ayuntamiento. On the 18th of May, as appears by the certificate of the Secretary of the Deputation, that body granted the prayer of the

petitioners, and in order that the recommendations of the ayuntamiento should be carried out, the matter was sent to the first constitutional alcalde, and thereafter possession was duly delivered to the grantees. It should be noticed in this case that the ayuntamiento sent its report to the political chief only for the purpose of being presented to the deputation, and that body took action on the petition.

Executive document number 18, Senate, 50th Congress, first session, contains what is called a supplementary report by Surveyor General Julian, recommending the rejection of the Ojo de la Cabra grant; but it does not appear that his attention had ever been called to the proceedings of the departmental assembly revoking the grant which it had previously made.

In executive document number 93, Senate, 49th Congress, second session, at page 2, will be found a supplementary report by Surveyor General Julian as to the Socorro grant. This grant is said to have been made in December, 1845, by Governor Armijo, but an examination of the order of Armijo will show that the claim made to him was that a grant had previously been made in 1815 or 1816, and his order is rather in the nature of a revalidation or confirmation of the petitioners' claim of having had a grant, rather than the making of a new one. It should be said that the genuineness of this document is disputed by the government.

There is one case which calls for special attention, and that is of the Petaca grant, which will be found at page 3 of executive document 31, Senate, 44th Congress, first

session. At the first glance this will appear to be a grant by Governor Perez in the year 1836, but, upon examination, it will be seen that the recommendation of the ayuntamiento of Ojo Caliente was based upon a former grant, under which there had been no possession for fully twelve years, and was to the effect that the lands should be granted to the new applicants for the reason that the former grantees had forfeited their rights. The Governor's order, based upon the recommendation of the Ayuntamiento, appears to have been for the purpose of substituting new persons under the old grant rather than the making of a new and original grant at that time.

The following grants all appear to have been made by Governor Armijo, and have all been reported to Congress. For some reason there appears to have been considerable diligence in getting many of these Armijo grants before Congress at an early day:

Sangre de Cristo grant, made in 1843, confirmed, nearly 1,000,000 acres.

Ex. Doc. 141, Senate, 47th Cong., 1st Sess., p. 13.

John Scolly grant, made in 1843 and 1846, confirmed.

Report 457, H. R., 35th Cong., 1st Sess., p. 163.

Chilili grant, made in 1841, confirmed.

Report 457, H. R., 35th Cong., 1st Sess., p. 182.

Maxwell grant, made in 1841, confirmed, over 1,700,000 acres.

Report 457, H. R., 35th Cong., 1st Sess., p. 237.

Vigil and St. Vrain grant, made in 1843, confirmed, but cut down to 22 square leagues.

Report 457, H. R., 35th Cong., 1st Sess., p. 269.

Bosque de los Apaches grant, made in 1845, confirmed, over 60,000 acres.

Ex. Doc. No. 14, H. R., 36th Cong., 1st Sess., p. 232.

Nolan grant, made in 1845, over 575,000 acres.

Ex. Doc. No. 28, H. R., 36th Cong., 2nd Sess. p. 2.

Jose Sutton grant, made in 1838, 16 square leagues.

Ex. Doc. No. 112, H. R., 37th Cong., 2nd Sess., p. 4.

Nolan grant, made in 1843, confirmed, but reduced to 11 square leagues.

Ex. Doc. No. 112, H. R., 57th Cong., 2nd Sess , p. 30.

Cebolla grant, made in 1845.

Ex. Doc. No. 296, H. R., 42nd Cong. 2nd Sess., p. 4.

Alamitos grant, made in 1840.

Ex. Doc. No. 37, Senate, 42nd Cong., 3rd Sess., p. 10.

Estancia grant, made in 1845, over 400,000 acres.

Ex. Doc. No. 40, Senate, 42nd Cong., 3rd Sess., p. 3.

Sierra Mosca grant, made in 1846, over 100,000 acres.

Ex. Doc. No. 3, Senate, 43rd Cong. 1st Sess., p 8.

Una de Gato grant, made in 1839.

Ex. Doc. No. 2, Senate, 43d Cong. 2nd Sess., p. 12.

If we exclude from consideration the Petaca grant as not being a new grant but a mere order for a new possession under an old grant, it is worthy of note that there was no attempt by any Governor to make a grant until March 14, 1838, when Governor Armijo attempted to make a grant to Jose Sutton. It is also worthy of note that the most of the grants made by Armijo were grossly in excess of the limit fixed by the colonization law of 1824. Either he was a great official who was not limited by the ordinary laws of the land or he was clearly a usurper of powers which did not belong to him, and if he exceeded his powers as to the quantity of land which should be granted, it is quite as likely that he assumed a power which did not belong to him when he undertook to make any grants at all. It is strange that he alone of the long list of Governors who held office between 1828 and 1846 should have discovered that the Governor had any such power. There is no official authenticated list in existence of the Governors in New Mexico during that period, but from the evidence in the archives it seems certain that the following named persons held the office during that period, but possibly some may omitted: Manuel Armijo, Jose Antonio Chavez, Santiago Abreu, Francisco Sarracino, Mariano Chavez, Juan Rafael Ortiz, Albino Perez, Pedro Munoz, Juan A. Archuleta, Antonio Sandoval, Mariano Martinez, Jose Chavez, and Juan B. Vigil y Alarid.

It seems reasonably certain that Manuel Armijo first held office from May, 1827, to March, 1829, but the exact dates and duration of his later governorships cannot be stated with certainty.

Attention must be called to the fact that there is no record preserved of proceedings of deputation or assembly during the time between 1837 and 1845.

I cannot say that I have examined every entry in the journals of the territorial deputation and depart-

mental assembly which have been preserved at Santa Fe. This would have taken an amount of time much greater than possibly could be given to this work. I have, however, endeavored to examine all of the papers among the archives in the office of the surveyor-general, bearing date after 1828, which in any way relate to the granting of lands. It is possible that some may have been overlooked, but they must be very few, if any. I do not mean to be understood by this that all such papers are referred to or set out in this brief, as many of them appeared to be of no importance. Nothing has been found to militate against the position of the appellant, which is that for nearly eighteen years after the promulgation of the regulations of 1828, no governor of New Mexico, except Manual Armijo, attempted to make grants, and the uniform course of proceeding was for the deputation or assembly to make donations of lands.

In addition to this statement of the general condition of affairs, attention must be called to a number of particular things which appear from the archives and records, as follows:

1. We have the declaration by a committee of the deputation, contained in Archive 812, that there was no doubt that it was within the power of the deputation to grant land.

2. We have the continued acquiescence of governors in the exercise of the granting power by the deputation or assembly as shown in Archives 901, 918, 921, 1309, and 1322, and as shown also by the fact that the governor was ex-officio president of the deputation and assembly.

3. We have the distinct assertion by the governor, through the Secretary of the government, Guadalupe Miranda, as shown in Archive 801, that the

granting or refusing of lands for cultivation belonged to the departmental assemb y.

4. We have the opinion, given in 1832, of a person learned in the law, that this power was exclusively vested in the territorial deputation

5. We have a clear acknowledgment by the Governor in 1834 of the power of the deputation in the case of the Tajique grant.

6. In 1832, in the matter of the Tierra Amarilla grant, the governor acknowledges the authority of the deputation, and the same may be said as to the San Pedro grant, the Canon del Agua grant, and the Gotera grant.

7. Only one governor ever assumed this power, and he so clearly exceeded his authority in other directions as to cast doubt upon all of his acts, and, moreover, it does not appear that even he ever attempted to make any grant until seven years after the making of the grant now under consideration.

It must not be forgotten that it is a matter of general history of New Mexico that the Mexican archives and records have been, in large part, destroyed under both the former and the present governments.

In the Vigil case, so far as can be ascertained from the report sent to Congress, or from the opinion of this court, it does not appear that attention was ever called to the grant as made by the departmental assembly. From the entry in the journal of the assembly, it appears that but a small amount of land was really granted. The grantees were given land to open wells and what they could cultivate, and this land was to be somewhere within the out-boundaries mentioned, and no right to the pastures was given. Upon this modest concession the grantees founded a claim to the

absolute ownership of two million acres. Clearly the departmental assembly never intended anything of the kind, but did intend that there should be actual settlement upon, and cultivation of, some of the land and the establishment of wells upon a stretch of country the very name of which indicated its mortiferous character, due entirely to the lack of water, as Vigil and his associates set out in their petition. Had they actually opened their wells, at which, as they ingenuously say in their petition, travelers could obtain water "*a muy poca costa*," they would have had a fortune in the wells alone, and undoubtedly the assembly had this in view. The land given, to the extent that the grantees could cultivate, with no right to the grazing land, would obviously be small in quantity. In a country where agriculture could be carried on only by irrigation, and in a waterless region like the *jornada del muerto*, the proposed wells were expected to furnish water for the cultivation intended; and no one could have contemplated more than a comparatively insignificant amount of irrigation by water supplied from wells.

Somewhat more than twenty years later, Jack Martin actually did what Vigil and his co-grantees proposed to do, and "Martin's Wells" were as well known to the whole southwest as any place or natural object between Kansas and California, while Martin acquired a fortune by furnishing water to travelers "*a muy poca costa*."

Had the actual decree of the assembly been presented to the courts, and attention called to the long-continued and almost uniform exercise of the granting power by the assembly, it is probable, to say the least, that the opinion in the Vigil case, would have been different in some particulars, although the claim might not have been allowed. The grant was made for a promised consideration moving from the grantees to the public, and that consideration was not only never received, but no attempt was ever made at any

time by the grantees to perform their part of the contract. No injustice was done them by the decision of this court, even if the doctrine now urged, in the present case, is the correct one.

The record in the present case shows continuous possession, cultivation and costly improvements for a period of sixty years before the organization of the Court of Private Land Claims. Every consideration of natural justice and equity seems to require the acknowledgement and confirmation of this claim if the court can possibly find any authority in law to take that course.

F. W. CLANCY,
Counsel for Appellant.

No. 14.
Reply Br. of Clancy
Filed Oct. 14, 1890

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In the Supreme Court of the United States

OCTOBER TERM, 1890.

No. 14.

J. FRANCISCO CHAVEZ *vs.* UNITED STATES.

REPLY BRIEF OF APPELLANT.

F. W. CLANCY,
Counsel for Appellant.

LAW REPORTER PRINT.

In the Supreme Court of the United States

OCTOBER TERM, 1899.

No. 14.

J. FRANCISCO CHAVEZ *vs.* UNITED STATES.

REPLY BRIEF OF APPELLANT.

In his original brief appellant took the position that, from the date of the regulations of 1828 to the time of the American occupation in 1846, no governor of New Mexico, except Manuel Armijo, made any grants of land, and that the uniform and usual course of proceeding showed that the territorial deputation, or departmental assembly, was the sole granting authority as to lands. In support of this, there was submitted a condensed statement of the substance of a great many of the Mexican archives and of proceedings of the deputations and assemblies now preserved in the office of the surveyor-general for New Mexico.

In an attempt to meet this and to break the force of the showing as to the contents and effect of the records of the former government, counsel for the appellee have filed a "Supplemental Brief and Abstract of Archives." The abstract has been prepared by Mr. W. M. Tipton, and can undoubtedly be relied upon as correct as far as it goes. The principal criticism to be made on his work is that he uses the word "grant" indiscriminately, whether describing a mere allotment under a previous grant, a license to occupy and cultivate, or a complete alienation of a part of the public

domain. This is misleading and has evidently misled counsel for the government, who, in their effort to show that there was no uniformity of procedure as to the granting of lands in New Mexico, but, on the contrary, great confusion and uncertainty, and unwarranted assumption of authority by different officials, class everything in the abstract as grants, and make an enumeration, at pages 4 to 6 of their supplemental brief, which certainly seems to show a most disorderly state of things. Examination will disclose that this impression is not well founded in fact, and that there is practically nothing shown by the abstract of archives seriously to affect the validity of appellant's position. As briefly as possible it will be shown herein how erroneous are the conclusions of counsel for appellee.

In that abstract are set out 101 documents or records, of which counsel are careful to state that Nos. 1 and 51 are not "grants." This leaves us 99 "grants," made during the period from 1821 to 1846. I intend to confine this examination to the period covered by appellant's original brief, from November 21, 1828, to July, 1846. This requires us to begin with No. 34 in the abstract presented by the government. Excluding No. 51, this leaves 67 things which the appellee styles "grants." Appellant uses this word to mean the primary giving of title to public land, and it should be so understood throughout this argument.

From the 67 "grants" must be eliminated three, Nos. 38, 62 and 94, as having no possible bearing on the question under discussion. Neither was made by New Mexican authorities. No. 38 was made in 1832, by the State of Coahuila and Texas, and No. 94 by the State of Texas in 1844, and both, so far as New Mexico is concerned, were acts of unwarrantable usurpation. They certainly can throw no light on the question of the condition of the law in New Mexico as to alienation of the public domain. No. 62 is a grant by the State of Chihuahua of land certainly belonging to that State at that time, and because the land falls

within the limits of the territory ceded to the United States in 1854, and is now in New Mexico, can not make this a New Mexican grant.

Of the 64 remaining, 25 are clearly not grants at all, and at least four others are doubtful. The 25 which are not grants are Nos. 42, 46, 48, 49, 50, 54, 55, 59, 63, 68, 71, 72, 73, 74, 75, 79, 80, 81, 82, 84, 85, 86, 87, 97 and 101. Of these, Nos. 42, 71 and 101 are proceedings by judicial officers under the mining ordinances, as to registration of mines and the use of land about the mines in connection with their operation. The officers were acting within their lawful powers, but they did not attempt to confer any title to the land, nor could they lawfully have done so. These are no more grants than are mining locations under United States laws.

The remaining 22 of the 25 are, all but one, No. 48, allotments, by prefects and alcaldes, under grants previously made, and do not purport to be transfers of the original government title. Fourteen of them are of land in the Mora grant, and they are Nos. 46, 49, 50, 54, 72, 73, 79, 80, 81, 82, 84, 85, 86 and 87.

Three of them, Nos. 59, 68 and 75, are of land at Galisteo, within what is commonly called the Eaton grant.

No. 55 is of land within the grant of Las Vegas, but Mr. Tipton says:

> "It does not appear that this grant was intended as an allotment under the grant to the town of Las Vegas, but rather it was made by the exercise of that power of control and disposition over lands assigned to a town, but undisposed of, which was frequently employed under the Mexican government in New Mexico, where the granting of lands within the out-boundaries which had been assigned to a town or community would not result in injury to the latter."

It must not be forgotten that this was under the Mexican, not the Spanish, government.

No. 63 is an allotment, in the language of Mr. Tipton, "made under some order emanating from a source not known."

No. 97 is an allotment of land under the grant of the State of Chihuahua, already referred to as No. 62.

No. 74 is an allotment of land under the Anton Chico grant.

No. 48, although called a grant by Mr. Tipton, is not so, as will be seen by reference to the original Spanish, at page 6 of *Ex. Doc. No. 2, Senate, 43d Cong., 2d Session*, where it appears that the three "grantees" were merely given a license or permission to occupy and use without any attempt to confer title. The translation in the same document is inaccurate in rendering the word "posession" as "grant."

The four doubtful "grants" are Nos. 57, 60, 61 and 96, and of these Nos. 57, 60 and 61 are, by counsel for appellee, classed as mere allotments under previous grants. Any doubt should, of course, be resolved in favor of the regularity of official action, and they should not be considered as attempts at unlawful "grants," if this can be avoided. No. 96, in the opinion of Mr. Tipton, is possibly an allotment under the Eaton grant.

We are now left with thirty-five of the 67 "grants" with which we started. Of these, fourteen were made by Governor Manuel Armijo—Nos. 52, 53, 58, 64, 66, 76, 77, 78, 90, 91, 92, 93, 99 and 100. Appellant has conceded that this governor made grants, but insists there is no clear proof that any other governor did so between 1828 and 1846, and even he did not, until October, 1837, after the adoption of the constitution of 1836.

Eliminating these fourteen Armijo grants, we have 21 left for consideration. Of these it is conceded by counsel for appellee at page 4 of their supplemental brief, that ten were made by the territorial deputation or departmental assembly—Nos. 35, 36, 37, 39, 40, 44, 88, 89, 95 and 98. To these should be added No. 83, as will be seen by reference to what

Mr. Tipton says at pages 59–60, and to page 30 of appellant's original brief.

There are four other grants—Nos. 41, 43, 45 and 47—which are alleged by counsel for appellee to have been made by political chiefs. Of these, No. 43, the Tajique grant, was a temporary order for possession, made during a recess of the territorial deputation; No. 45, the Mora grant, presents no definite, certain proof as to who made the grant; and No. 47 was probably an order for a new possession under an old grant.

See appellant's original brief, pp. 28–30, 31–32.

The evidence as to who made the grant in No. 41, the Cubero case, is oral, the grant papers having been lost for many years. Witnesses testified that they had a grant from Sarracino, the political chief, but this is quite consistent with the grant having been regularly made by the deputation, and an order having been given by the political chief that possession should be delivered in accordance with the action of the deputation, as was done in other cases.

There is no satisfactory proof that these four, or any other grants, except Armijo's, were made by political chiefs or governors.

We are thus brought to the consideration of only six out the sixty-seven "grants" with which we started, as evidence of the lawless state of grant-giving, upon which the argument of the government depends. They are Nos. 34, 56, 65, 67, 69 and 70.

It must be admitted that four of these, Nos. 56, 65, 67 and 69, indicate some usurpation of authority on the part of prefects—an authority distinctly claimed by the Prefect Archuleta, and as distinctly repudiated by the governor, as will appear by reference to Archive 801, the substance of which is stated at page 17 of appellant's original brief, and from which it will be seen that the granting of lands belonged to the departmental assembly. The record in No.

56 is quite instructive, and tends to support appellant's position, as will be seen by reference to pp. 27–8 of his original brief. In that case, the grantees were given possession by a prefect in 1839. In 1845, Serafin Ramirez, an officer of the government and presumably possessed of some knowledge of the law, having been employed as attorney by the settlers, evidently discovering the bad condition of their title, petitioned the governor for an approval of the grant to be made in conjunction with the departmental assembly. He refers to the law of 1824, but not to the regulations of 1828. The assembly acted on the petition, and the governor, three days later, approved and revalidated the grant. The assembly appears to be the primary power. Even in this case it is not clear that the act of the prefect was the beginning of the title as the grantees in their original petition make an obscure allusion to earlier proceedings which seems to indicate a grant earlier than 1820.

Appellant's Original Brief, pp. 27–8.
Report No. 457, H. R., 35th Cong., 1st Sess., pp. 210, 215, 226.

As to No. 34, it must be conceded that, so far as the papers disclose, there appears to have been an extraordinary and unwarranted exercise of power by the alcalde of Taos. The papers can be found on file in this court, in the case of Julian Martinez *vs.* United States, which was No. 156 on the calendar of the October, 1898, term. We should bear in mind, however, the difficulty of understanding all of the official actions under the former government.

So also as to No. 70, the original papers would seem to justify the belief that a justice of the peace far exceeded his lawful authority in undertaking to make a grant of land; but this is not entirely certain, as it appears from the record in the case, in this court, (*May Hays vs. United States, No. 19*), that there is positive testimony that a grant was made by the Governor, Manuel Armijo, and the justice, who

acted, merely delivered possession under the orders of the governor.

Still, we may concede that 34, 56, 65, 67, 69 and 70 were made without authority, without affecting appellant's position and without leading to the conclusion that any such condition of anarchy prevailed in New Mexico about the granting of lands as is set out by counsel for the United States. Nos. 56 and 65 were made by the prefect, Antonio Sandoval, and Nos. 67 and 69 by the prefect, Archuleta. These were the acts of but two men. Their authority to make such grants was distinctly denied, as we have already seen, in the letter of Miranda, of 1842, to Archuleta (*Archive 801*); and in No. 56 the error was repaired by obtaining a decree of the departmental assembly, as hereinbefore stated.

Thus we have, at the utmost, only four officials—two prefects and two alcaldes—clearly exceeding their authority in this regard, instead of the bewildering swarm of unauthorized performers pictured at pages 4–5 of the supplemental brief for the United States.

Against this, we have, as pointed out in appellant's original brief, the continuous, unfaltering assertion of this power by the deputation and assembly, not only in the grants which they actually made, but in a great many other instances where petitions were acted upon unfavorably; the distinct recognition by the governors of the possession of this power by the deputation or assembly, as shown in Archives 801, 901, 918, 921, 1309 and 1322; in the cases of the grants known under the names of Tajique, Tierra Amarilla, San Pedro, Cañon del Agua and Gotera; and the opinion of the Licenciado Barreira, in 1832, that the giving of lands is an exclusive attribute of the territorial deputation.

No. 51, in the abstract, appears to be of importance, as counsel for appellee have printed it twice in their briefs. It is an unsigned draft of a grant dated March 13, 1837, and counsel declare that it is sufficient to to show that the Colonization Law of 1824, and the regulations of 1828, were

in force in New Mexico. Appellant insists that all it shows is that the existence of the law and regulations was known in New Mexico, but not that the regulations were in force. On the contrary, the fact that this grant, carefully drawn to conform to the regulations, was never actually executed, would seem to make the paper evidence against the contention of appellee, especially when coupled with the facts that in no other document in the Mexican archives, as I believe, is there any mention of the regulations, although the law of 1824 is referred to a number of times, and that no grant was ever made in New Mexico in which there was more than a remote approach to conformity to those regulations.

Attention is again called to the fact that in the Mexican archives is to be found a great mass of proof of the correctness of appellant's position, a considerable portion of which is set out in appellant's original brief. There is no lack of harmony between that brief and Mr. Tipton's abstract. Each contains matter not in the other, but there is no substantial disagreement. Indeed, it ought to be said that the condensation of archives set out in appellant's brief was submitted to, corrected in some details, and approved by Mr. Tipton, before it was printed. This was done in pursuance of an understanding with the special counsel who appears in these cases, in order that he should be assured by, probably, the best authority in the country, of the accuracy of that which appellant desired to submit.

Counsel for appellant has marked on the margins of the pages of his original brief, opposite the various summaries of the Mexican archives, numbers corresponding to those used in Mr. Tipton's abstract, in order to indicate the relation between those summaries and the real grants set out in the abstract. It will be noticed that many of those summaries have no numbers opposite, and that they relate to matters not set out in the abstract.

F. W. CLANCY,
Counsel for Appellant.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

J. FRANCISCO CHAVEZ, appellant, *v.* THE UNITED STATES. } No. 88.

NERIO ANTONIO MONTOYA GRANT IN NEW MEXICO.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT.

This cause was instituted on July 16, 1892, by the petitioner filing his petition for the confirmation of the Nerio Antonio Montoya grant or private land claim, situate in the county of Valencia and Territory of New Mexico, containing about 5,000 acres. (R., 1–3.)

Subsequently an amended petition (R., 13, 14) was filed, on which the cause was tried, which alleged, substantially, that on November 12, 1831, the Territorial deputation of New Mexico, with the consent and participation of the acting governor and political chief of said Territory, granted to Nerio Antonio Montoya the land in controversy; that on December 12, 1831, the said Nerio Antonio Montoya was placed in juridical possession of said tract by Miguel de Olona, alcalde of the jurisdiction of Tome; that on December 22, 1831, the governor and political chief of New Mexico, in answer to a communication from said Alcalde Olona, shows that he was advised of Olona's having executed the decree of the deputation; that said Nerio Antonio Montoya and his grantees have remained in possession of said land up to the present time; that said claim was submitted to the surveyor-general for New Mexico under the provisions of the act of Congress of June 22, 1854, and was by that officer, on June 20, 1871, approved and recommended to Congress for confirmation; that subsequently, to wit, on May 8, 1886, Surveyor-General Julian made a supplementary report recommending the rejection of the grant, and that neither of these reports have been acted upon by Congress.

On February 18, 1896, the United States answered this petition (R., 15–17) and set up as a defense the want of power in the Territorial deputation to make a grant, and the fact that if the governor participated in the deliberations of the Territorial deputation he only so participated as an *ex officio* member of that body and did not act as governor. The other allegations of the petition were put in issue by the answer.

Trial of the cause was had on March 2, 1896, when the petitioner introduced in evidence the papers on which he based his claim, consisting of the original petition of Nerio Antonio Montoya to the ayuntamiento of Tome (R., 3, 6), setting forth the various reasons why he should have the grant, and asking that body to take his situation into consideration, requesting that it append to his petition a report to the most excellent deputation, so that that body might, if it saw proper, direct that he should be placed in possession of the land "from the central spring to the rancheria, about half a league in extent along the cañon and distant about one league from the Manzano grant, which tract is uncultivated, and in my opinion the grant would not be injurious to the inhabitants within this jurisdiction in regard to *pasturing and water for their live stock*, owing to the unsuitableness of the cañon in which the said tract lies and the small quantity of water it contains, and it is valuable only for cultivation on a small scale, for which purpose only I desire it, I having planted there last year, and the crop, though I could not tend it well, owing to the great distance, did not fail to relieve me with its limited production." This petition was dated in Valencia, February 28, 1831.

It is suggested that this petition, according to its recitals, hardly indicates that Montoya was seeking the title or exclusive use, as against the other inhabitants of that jurisdiction, of anything save a very small portion of land for cultivation; and in his mind, the pastures and watering places were to remain for the general use of the public.

On March 19, 1831, the ayuntamiento of Tome made its report and recommendation as requested by Montoya in his petition, which is as follows (R., 7):

> This honorable council being convinced by the strong reasons set forth by the petitioner, and no injury resulting, but rather considerable advantage, to the interests and encouragement of agriculture, his petition will go before the most excellent Territorial deputation, which, as the authority competent, may accede to the donation of the land prayed for by the said petitioner, *without injuring the pastures and watering places for the passers-by.*

It would thus seem that the report of the ayuntamiento conformed, as to the character of the disposition and use to be made of the land, with Montoya's petition:

On November 12, 1831, the deputation, with the petition and report before it, resolved to give the land prayed for, and charged the alcalde to execute the documents which would secure the grantee in the grant thereby made. (R., 7.)

In obedience to this decree, the alcalde appears to have given notice of the intention to place Montoya in possession of the property (R., 7, 8), and on the 12th of December of that year he appears to have given the possession, defining the boundaries.

It will be observed that the alcalde, conforming to the petition and the report of the ayuntamiento, said: "I notified him of the conditions expressed in the report relative to pastures and watering places for the use of passers-by," etc. (R., 8.)

Indorsed on these title papers is a conveyance of the land, by means of the papers themselves, from Montoya

to Juan Perea and his sister, Dolores Perea, dated October 2, 1845. (R., 8, 9.)

On December 22, 1831, a letter was directed to Miguel Olona by Jose Antonio Chavez, political chief, acknowledging the receipt of a communication of the 20th instant, by which it appeared that Chavez was notified of the fact that Montoya had received the grant and possession of the tract. This letter seems to relate more particularly to the fees of the alcalde for placing the grantee in possession. (R., 9.)

This completed the title papers presented on the trial, the action of the Territorial deputation in the matter being evidenced by entries in the journal of that body, which were copied and translated. (R., 9, 10, 11.)

The petitioner also offered in evidence the original papers in the grant to the town of Torreon (R., 18).

The introduction of these documents in evidence was objected to by the Government for the reasons set forth in the record (R., 18).

For the purpose of identifying the tract claimed and showing possession by the original grantee and his successors, the petitioners introduced the testimony of Francisco Sanches Lopez (R., 19–25), the petitioner testifying also in his own behalf (R., 25–28). On the cross-examination of the petitioner (R., 27) it was developed that the tract in controversy lay entirely within the outboundaries of the Bartolome Baca grant, previously confirmed by the Court of Private Land Claims (which decree, however, has since been reversed by this court and the grant rejected).

It was admitted that the land in controversy lay within the exterior boundaries of the Bartolome Baca grant as confirmed by the Court of Private Land Claims.

The Government offered no oral testimony, but introduced in evidence (R., 29) the records of the proceedings of the Territorial deputation for November 11 and 12, 1831 (R., 35–38), and the decree of the Court of Private Land Claims in the Bartolome Baca Case (R., 39).

The Court of Private Land Claims sustained the contention of the United States as to the want of power in the Territorial deputation to make the grant (R., 40), following the decision of this court in the case of *United States* v. *Vigil* (13 Wall., 449), and rejected the claim. The contention that former cases were distinguishable on the ground that the governor was present and presided at the meeting of the Territorial deputation at which the grant in question was made, was disposed of by the court with the statement that such presence "makes no difference, as the power to make the grant was exclusively in the governor, and the Territorial deputation had no jurisdiction in the matter" (R., 40).

The record does not disclose any allowance of or citation on appeal, but the Government admits that such an allowance of appeal was made, citation served as required by law, and the appeal properly perfected.

ARGUMENT.

I.

The grant appears to have been initiated in February, 1831, and completed in December of that year. The disposition seems to have been made by the Territorial

deputation without previous action thereon by the political chief.

Although it is alleged in the amended petition that (R., 13) "the Territorial deputation of New Mexico, with the consent and participation of the acting governor and political chief, granted the land prayed for by said Montoya," etc., the consent and participation on the part of the acting governor and political chief must rest on the assumption that Santiago Abreu, who signed the proceedings as president of the deputation, was the political chief at that time, November 12, 1831. It is also alleged (R., 13), as further evidence of the knowledge of the political chief, that "on the 22d of December, 1831, the governor and political chief of New Mexico, in answer to a communication from said Olona, shows that he was advised of Olona's having executed the decree of the deputation." This communication was signed by Jose Antonio Chavez (R., 9), supposedly the then political chief.

The amended petition was framed upon the theory that the colonization law of August 18, 1824, and the executive regulations of November 21, 1828, were in force. Under the latter, before an definitively valid interest passed as against the nation, it was necessary that proceedings be instituted before the political chief, who made the grant in the first instance, and then the expediente was to receive the concurrence and approval of the Territorial deputation. The jurisdiction of the Territorial deputation to take action relative to granting land depended upon previous proceedings before and

action by the political chief, and in the absence of such no foundation was laid for the exercise of its powers.

The case was tried and submitted to the court below upon the theory that the original initiation and completion of proceedings before the Territorial deputation complied with the requirements of the regulations of 1828, because the political chief was *ex officio* president of that body, nothing appearing to show that the matter received his previous independent action, and upon the pleadings no other contention was admissible. The Court of Private Land Claims rejected the claim on the authority of the cases of *United States* v. *Vallejo* (1 Black, 541) and *United States* v. *Vigil* (13 Wall., 449).

In the case of *Hayes* v. *United States* (170 U. S., 637), it was held (644):

> That the necessary effect of the decree of July 6, 1824, the colonization law of 1824, and of the constitution of October 24, 1824, was to deprive the officials of a Territory of the power to dispose of the public lands, even though it be arguendo conceded that such power had theretofore been possessed by the officials who exercised authority within the area which was made a Territory by the Constitution.

The regulations of November 21, 1828, was the first attempt under the constitution of 1824 and the law of August 18, 1824, to clothe the Territorial officials with authority to dispose of the vacant public lands, and they remained in force until the change in the form of government from the Federal to the central systems by the constitution of December 29, 1836. (Reynolds, 203.) This constitution defines the powers of the governors, formerly political chiefs, in the Territories under the con-

stitution of 1824. (Reynolds, 205, 208.) It is believed that prior to the adoption of this constitution in 1836, the law of 1824 and the regulations of 1828 were the only source from which Territorial officials derived authority for the disposition of the vacant public lands, and these were known to the officials in New Mexico. Since the argument in the Hays Case an unsigned draft (borrador) of a grant to Antonio Armijo and seventy families of lands at the junction of the Sapallo, Mora, and Coyote rivers, dated March 13, 1837, has been found in the archives. Nothing further appears to have been done as to the grant. It is sufficient, however, to show that the colonization law of August 18, 1824, and the regulations of November 21, 1828, were recognized as being in force in New Mexico prior to the date of the instrument. The following is a translation of this archive:

1837.

Archive 1244. March 13. Unsigned draft of a grant to Antonio Armijo and seventy families of lands at the junction of the Sapello, Mora, and Coyote rivers.

In exercise of the power which is granted me by article 1 of the regulations issued on the 21st of November, 1828, under the law of the 18th of August, 1824, and in view of compliance with the requirements provided in said regulations in the various articles thereof, and the land known under the name of the Junta de los Rios, Sapello, Mora, and Coyote being comprehended by them, it being thus to the interest of the best service of the Mexi-

can nation and to the particular service of this Territory, according to the petition of citizen Antonio Armijo, who, for himself and in union with seventy families that are set out in the accompanying list of names, desires to settle upon and cultivate that land, after examining the report made by the common council of El Bado, under date of November 6 of the preceding year of 1836, I have seen fit to grant said land to said Armijo and associates, in the name of the supreme powers of the nation, as there is no opposition or impediment according to the sixteen articles included in the law of the 18th of August, 1824, already cited, and with commendable preference to a Mexican citizen, and the more so as no foreigner is found in the petition, saving the formalities prescribed in article 5 of said regulations, inasmuch as the most Excellent Deputation is in recess, and reserving the provisions of article 6 of said regulations, I issue this title under article 8, in absolute conformity with the laws on the matter, and designate five months, counted from the date of this document, as the specific and indispensable term for the settlement and cultivation of said land; so that, if in said time, any considerable part or all of them shall not have complied with the settlement or occupation it shall fall under the penalty of forfeiture and the right to a new denouncement on the part of another, under the provisions of law 11, book 4, title 12, article 4 of the royal instructions of the 15th of October, 1754, and the provisions of article 11 of said regulations; so that in its case the grant shall be void, the Government reserving the right to make use of the authority to revalidate it in the case stated, granting to each head of family 200 varas of land for farming in the narrow part of the land, and in the widest portion 100 varas, to which end the constitutional alcalde of Bado, in

> rigorous compliance with the laws, will be present at the allotment of the land to issue the main deed of donation, the particular deeds of the individuals, and to return to this Government the main original proceedings with the plat of the land granted, in conformity with the provisions of article 9 of said regulations, requiring of the principal contractor, who is citizen Antonio Armijo, the obligation provided for in article 10 of said regulations, the new settlement to be subject, in civil matters, to the jurisdiction of Bado, with the other provisions of the laws and regulations in the matter.
>
> Given at Santa Fe, New Mexico, on the 13th day of the month of March, 1837.

This archive leaves little doubt as to the law in force and the recognized source from which Territorial officials in New Mexico derived their authority for disposition of the vacant public lands.

The Vallejo and Vigil cases (*supra*) were both determined adversely to the validity of the claims under the very liberal provisions of the California act of 1851, and in the Hayes Case (*supra*) Mr. Justice White, discussing the requirements necessary to justify the Court of Private Land Claims in confirming the grant, says (p. 648):

> But in the act of 1891 the court is required to be satisfied, not simply as to the regularity in form, but it is made essential before a grant can be held legally valid that it must appear that the title was "lawfully and regularly derived," which imports that the court must be satisfied, from all the evidence, that the official body or person assuming to grant was vested with authority, or that the exercise of power, if unwarranted, was subsequently lawfully ratified.

Again, in the same case, discussing the limitations imposed upon the judicial branch of the Government in confirming grants, he says (p. 647):

> By the first subdivision of the thirteenth section of the act creating the Court of Private Land Claims that court and this court on appeal are expressly prohibited from allowing any claim under the act "that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land." This manifest limitation upon the power of the court in passing upon the validity of an alleged complete grant requires that the court shall not adjudge in favor of validity unless satisfied from the inherent evidence contained in the grant, or otherwise, of an essential prerequisite to validity, viz, the authority of the granting officer or body to convey the public domain.

The authority for this grant can not be drawn from the law of 1824 and the regulations of 1828, as it in no way conforms to their requirements. "Controlled * * * by the grant of power conferred by the act of Congress, we are unable, when the record discloses that the grant was not 'lawfully and regularly derived from * * * the Republic of Mexico,' to hold that it should nevertheless be confirmed because, although the proof convincingly shows that the grant does not conform to the requirements of the act of Congress," nor to the requirements of the law of 1824 and the regulations of 1828, "the grant yet must be held valid because of a supposed legal presumption. Indeed, if a legal presumption on the subject could be indulged in, the granting papers would not authorize it to be invoked." (Hayes Case, *supra.*)

II.

In presenting the claim of appellant to this court, his counsel has taken the position that its validity depends upon ability to sustain the proposition that "*the Territorial deputation had lawful power and authority to make the grant to Montoya.*" This carries with it the burden of showing, to the satisfaction of the court, that some law existed at the date of this grant (1831) for the disposition of the vacant public lands other than that of 1824 and the regulations of 1828, and that the requirements of such law have been complied with; and he must also bring the case, by the evidence, within the requirements of the act of 1891.

In the case of *United States* v. *Hartnell* (22 How., 288), it was held:

> The public domain (of Mexico) was the property of the Mexican nation, and those who are enabled to displace that title, separate portions of it from the public lands, and vest such portions in individual proprietors by perfected titles, could only do so in the exercise of sovereign power, because the public title was a sovereign right, and agents who assumed to exercise this authority must show that they represented the nation.

No law is produced authorizing the Territorial deputation to initiate and carry to final title such a claim as presented on the title papers. It is not pretended that it conforms or can be made to conform to and be sustained under the law of 1824 and the regulations of 1828, which were in force in New Mexico in 1831.

The argument presented to uphold this claim does not meet the requirement of the principle announced in the

Hartnell case, *supra*, but it asserts that (pp. 5, 6, appellant's brief):

> The regulations of 1828, which provided that the governor should exercise the power to grant lands, are mere executive regulations created by the act of the President of the Republic, and are not to be regarded like the provisions of the colonization law of 1824, which was the act of Congress itself, and against which no presumption can be entertained in favor of the validity of acts in contravention of its provisions; that, being mere regulations of this character, when we find official acts not in accordance therewith, there is room for the application of the well-established doctrine of presumption in favor of the regularity and validity of such acts; and, that in New Mexico, not only in this particular case, but in nearly all other cases of grants of land between 1828 and 1846, the uniform course of proceeding was like that in the present case, the grants being made by the deputation or assembly of New Mexico. The exceptions are to be found in the acts of Governor Manuel Armijo, who made a number of grants during the latter part of his career without the slightest regard to the restrictions of the law of 1824, and without any attention to the requirements of the regulations of 1828. His conduct was so much beyond the limitations imposed by law that in at least two cases surveyors-general of New Mexico, in reporting favorably upon his grants, declare that he was possessed of extraordinary and unlimited powers.
>
> Vigil and St. Vrain grants, Report 457, H. R., 35th Cong., 1st sess., p. 278.
>
> Nolan grant, Ex. Doc. No. 28, H. R., 36th Cong., 2d sess., p. 18.

To sustain his contention, a summary of the contents of several archives and records to be found in the office

of the Surveyor-General are submitted by appellant's counsel for the information of the court. Under the circumstances, it was thought proper to have the archives and records from the independence of Mexico in 1821 to the occupation of the country by the United States in 1846 summarized by Mr. Will M. Tipton, special agent of the Department of Justice, and the same will be found in a supplemental brief filed herein, together with comment thereon.

From this summary it appears that disposition of the vacant public lands by the use of the word "grant," applied generally, may be said to have been attempted by every official and official body existing in New Mexico between 1821 and 1846, and that they assumed the exercise of the sovereign right of disposition. However, when each case is analyzed, with a view of determining the character, purpose, and legal effect of the attempted disposition, it is found that the statement of counsel is very generously broad, and, instead of sustaining, the records contradict his assumption of the existence of a custom and usage so general and long continued as to amount to the repeal and abrogation of all known laws; for that, after an examination, any well-defined general custom and usage will be found to have been quite as much honored in the breach as in the observance.

It can not but be admitted that the omission by Congress, as one of the principles of decision, in the act of 1891 (sec. 7) of the "usages and customs of the Government from which the claim is derived," which was embodied in the act of 1824 (4 Stat. L., 52, sec. 1)

and in the act of 1851 (9 Stat. L., 631, sec. 11), was an intentional omission, and especially is this apparent when it is considered that the limitations and requirements of the act of 1891 are utterly inconsistent with an interpolation by construction of the omitted clause contained in former acts *in pari materia*. We must attribute to Congress some intelligent purpose in so doing, and if we do, it necessarily follows that even though a case be made in which the general custom of the former government was well established and observed, still it could not be adopted as one of the rules of decision under the act of 1891.

Recurring to the original proposition of counsel for appellants, recognized under the Florida and California acts in reference to dispositions of lands made by colonial governors, that "where the act done is contrary to the written order of the King produced at the trial, without any explanation, it shall be presumed that the power has not been exceeded; that the act was done on the motives set out therein, and according to some order known to the King and his officers, though not to his subjects," and his attempt to demonstrate that the action of the Territorial deputation in disposing of the lands of the nation contrary to the regulations of 1828 was analogous thereto, upon which contention he seems to rest his case, it is well to remember the forbidding distinction between dispositions of lands in Florida and Louisiana by colonial governors of vice-regal authority and dispositions of the vacant public lands of the Mexican nation by petty officials of the Territory of New Mexico. The vacant lands

in New Spain were the property of the King personally, forming part of the royal exchequer.

Their disposition was a matter of his personal concern alone, and his pleasure, however expressed, was the law. Where a colonial official, the *alter ego* of the King, disposed of any of the Crown lands, it was not a matter of public concern, but solely between him and the King. The granting officer was compelled to answer only to the principal for whom he assumed to act. Upon the independence of Mexico and the establishment of a popular form of government under a Federal constitution the lands which theretofore constituted part of the King's patrimony, and were subject to his disposing pleasure, became the property of the Republic of Mexico, and could not be alienated except with its consent, evidenced by some law conferring power upon some official or officials to execute the conveyance on behalf of the nation, within the limitations prescribed by the constitution and such law. The office of president (chief executive) was a creature of the constitution, which limited and defined his powers. The vacant public lands formed no part of his private or official estate. His power to dispose or regulate the disposition of such public lands was delegated to him under constitutional and legal limitations which he could not disregard, and of which every citizen presumably had full knowledge.

The Republic, exercising the sovereign right over its vacant public lands through constitutional channels, by the 16th article of the colonization law of August 18, 1824, directed that "the Government, under the prin-

ciples established in this law, shall proceed to the colonization of the Territories of the Republic." (Reynolds, 121, 2.)

Under this power delegated to the chief executive, regulations were issued on November 21, 1828, to carry the same into effect, and such regulations were a subdelegation of power which, with the law of 1824, were limitations upon its exercise by the Territorial officials. To bind the nation, the exercise of such power had to be *sub modo*, should conform to the regulations conferring it and relates back to the limitations upon the chief executive imposed by the constitution and the law under which he assumed to subdelegate it.

Secret orders and regulations, conferring power upon Territorial officials to exercise the sovereign right of disposition of the lands of the nation, known to them and the chief executive and unknown to the people of the nation, are violative of every protective principle of a government seeking to exist under constitutional limitations. It is true the chief executive could have modified and changed the regulations of 1828, within the limitations of the constitution and the law under which they were issued, but any change or modification is not to be presumed, forsooth some Territorial officials have assumed to disregard or exceed them.

No regulations subdelegating the exercise of a sovereign right can be presumed to have been changed unless the modifications are made as public as the regulations sought to be changed, or the law under which they were issued. Once open the door to the indulgence in

the presumptive power to dispose of the public lands, because of the oft-repeated exercise thereof by Territorial officials, and the end is easily anticipated. The indulgence in such presumptions would soon strip the nation of its public domain, for there were no officials in New Mexico so humble and lowly in pretensions that they did not attempt, in some form, to "*grant*" land.

The past experience of this Government, in its attempts to adjust its obligations under various treaties, evidently induced Congress to impose stringent limitations upon the judiciary in the law delegating the exercise of a quasi-political duty incumbent upon the United States under the treaties with Mexico of 1848 and 1853.

> No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that if not then complete and perfect at the date of the acquisition of the territory by the United States the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound, upon the principles of public law or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect. (Subsec. 1, sec. 13, act of March 3, 1891.)

Under the provisions of the act creating the Court of Private Land Claims, it is believed to be the duty of the judicial branch of the Government, in relation to grants made subsequent to independence and the adoption of

the constitution of 1824, to hold the officials of the Republic as near as possible within the letter and spirit of the constitution and laws passed thereunder, and that violent departures by officials who could only act under subdelegated authority, but who assumed to act for the nation in its sovereign right, must be sustained, not by presumption, but by some known and recognized authoritative law.

Tested by the law of the Republic of Mexico in force in 1831, and measured by the standard required by the law of 1891, the claim falls short of such requirements in both instances as entitle it to recognition.

Respectfully submitted.

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No. 88.

Supp. Brf. of Atty. Gen. (Reynolds) for Appellee.

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In the Supreme Court of the United States.

OCTOBER TERM, 1898.

J. FRANCISCO CHAVEZ, APPELLANT,
v.
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APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

NERIO ANTONIO MONTOYA GRANT IN NEW MEXICO.

SUPPLEMENTAL BRIEF AND ABSTRACT OF ARCHIVES.

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With a view of showing when, by what official, to whom, for what purpose, the extent and under what circumstances the vacant public lands in New Mexico were disposed of or attempted to be disposed of, from independence in 1821 to the American occupation in 1846, the Government presents a carefully compiled abstract or summary taken from the archives and files in the office of the surveyor-general of New Mexico and the files of the Court of Private Land Claims. This abstract has been made by Mr. Will M. Tipton, special agent of the Department of Justice, under the direction of counsel for the Government; and for our present purposes, the various "grants" have received an arbitrary consecutive

numbering, from 1 to 101, in their chronological sequence, without regard to their official designation as archives or reports.

There is included in this summary, as No. 1, a letter from Facundo Melgares, governor of the province of New Mexico, by which it appears that the reestablishment of the constitution of 1812 was duly promulgated in Santa Fe, the capital of New Mexico.

There is also included, as No. 51, a copy of archive 1244, dated March 13, being an unsigned draft of a grant to Antonio Armijo and seventy families of lands at the junction of the Sapello, Mora, and Coyote rivers, which was referred to in the original brief as showing that the colonization law of 1824 and the regulations of 1828 were recognized as being in force at and prior to that date.

The rest of the summary includes ninety-nine "grants" or attempted dispositions of the vacant public lands in New Mexico. The information as to thirty of these was obtained from the archives in the office of the surveyor-general for New Mexico. As to sixty-four of them, from the papers produced from private hands and filed before the surveyor-general under the law of July 22, 1854, and before the Court of Private Land Claims, and as to five of them information was gleaned from the journals of the Territorial deputation, on file with the surveyor-general.

It is believed that this summary is as accurate as it is possible to make it without printing in full the archives and reports themselves. An examination of it will develop, as suggested in the original brief, that every official and official body in New Mexico attempted to

dispose of the vacant public lands of the nation at some time during this period, and that no such general custom and usage ever obtained in the Territory as would justify and require it to supersede, as the practice and procedure in such cases, a known law, even if such were permissible under the act of March 3, 1891.

From Mexican independence in 1821 to November 21, 1828, the date of the promulgation of the regulations under the colonization law of 1824, thirty-two "grants" were made of lands in New Mexico, of which five were made by political chiefs and acting political chiefs (to wit, Nos. 10, 11, 12, 13, and 29); one by the governor (No. 6); one by the lieutenant-governor (No. 7); two by alcaldes (to wit, Nos. 21 and 24); six by common councils—ayuntamientos—(Nos. 2, 3, 4, 5, 8, and 9); one by the provincial deputation (to wit, No. 14); fifteen by the Territorial deputation (to wit, Nos. 15, 16, 17, 18, 19, 20, 22, 23, 25, 26, 27, 28, 30, 31, and 32), and one by the governor of Chihuahua (to wit, No. 33).

As to this period, the abstract requires no additional comment further than to suggest that a large proportion of the thirty-two "grants" were intended to be allotments and assignments of small quantities of agricultural lands, a majority of which were under previously existing grants for the establishment of towns or the promotion of colonization in communities under the jurisdiction of municipal bodies and their ayuntamientos, all of which were subject to the general control of the Territorial deputation.

Of the fifteen so-called "grants" made by the Territorial deputation, only Nos. 16, 17, 19, 27 (the entry in the journal of the Territorial deputation recites that the

decree of January 4, 1813, enacted by the Cortes of Spain, was in force at that time, March 17, 1836), 30, and 31 appear to be original grants of the vacant public lands, and not allotments under previously existing town or community grants, but as to this fact, the evidence at hand is very defective and much is necessarily and generously left to surmise. The others are unquestionably allotments under previously existing town and community grants.

From November 21, 1828, to December 29, 1836, the date of the adoption of the new constitution, fifteen "grants" were attempted—four by political chiefs (to wit, Nos. 41, 43, 45, and 47); six by the Territorial deputation (to wit, Nos. 35, 36, 37, 39, 40, and 44); one by the common council (to wit, No. 48); three by alcaldes (to wit, Nos. 34, 42, and 46); and one by the State of Coahuila and Texas (to wit, No. 38).

During this period, all of the fifteen so-called grants, except the grant involved in the case at bar (No. 37) and No. 42, which was a mining location under the old Spanish ordinances of 1783 and known as the Ortiz Mine grant, were allotments under previously existing grants, or were grants for the establishment of new towns and communities under which allotments were had, except No. 38, which was an empresario grant, and known as the Arkansas or Beale's Colony grant.

From December 29, 1836, to the American occupation in 1846, fifty-two "grants" were attempted; sixteen by governors (to wit, Nos. 52, 53, 58, 62, 64, 66, 76, 77, 78, 83, 90, 91, 92, 93, 99, and 100); four by the departmental assembly (to wit, Nos. 88, 89, 95, and 98); thir-

teen by prefects and acting prefects (to wit, Nos. 56, 60, 61, 65, 67, 68, 69, 75, 79, 80, 81, 82, and 96); five by justices of the first instance (to wit, Nos. 84, 85, 86, 87, and 101); thirteen by alcaldes and justices of the peace (to wit, Nos. 49, 50, 54, 55, 57, 59, 63, 70, 71, 72, 73, 74, and 97), and one by the State of Texas (to wit, No. 94).

During this period the summary shows that twenty-five of these "grants" were evidently allotments or assignments under previously existing grants to towns, communities, or settlements (to wit, Nos. 49, 50, 54, 55, 57, 58, 59, 60, 61, 63, 68, 72, 73, 74, 75, 79, 80, 81, 82, 84, 85, and 86); eleven were new settlements and allotments thereunder (to wit, Nos. 56, 62, 65, 66, 67, 69, 70, 89, 93, 98, and 99); four were empresario grants (to wit, Nos. 64, 76, 77, and 78); ten were new grants to individuals by the governors of New Mexico (to wit, Nos. 52, 53, 83, 88, 90, 91, 92, 94, 95, and 100), and two were mining locations (to wit, Nos. 71a nd 101).

The following table, compiled from the abstract of the archives, will prove interesting as showing by what functionaries and bodies grants purport to have been made in New Mexico during the period 1821 to 1846 and the numbers made by each:

Political and acting political chiefs	9
Governors	16
Lieutenant-governors	1
Alcaldes	3
Justices of the peace	8
Judges of first instance	5
Ayuntamientos (common councils)	7
Prefects and acting prefects	13
Constitutional justices or alcaldes	7

Provincial deputations	1
Territorial deputations	21
Departmental assemblies	4
State of Coahuila and Texas	1
State of Texas	1
Governor of Chihuahua	2
Total	99

The abstract further reveals that no class of officials or official bodies confined themselves to dispositions of one particular character, but attempted "grants" of various kinds. This fact, taken in connection with the foregoing table, tends rather to disprove than to prove the assertion of appellant's counsel that such a well defined and established custom or usage existed in New Mexico as would constitute an abrogation of the known and existing law at that time relative to grants of land, even if the court were permitted, by the terms of the act of 1891, to indulge in any such portentious presumption.

Thus, it seems we are permitted no criterion save, Is the claim involved in the case at bar one that appears "to be upon a title lawfully and regularly derived from the Government of * * * Mexico?" Obviously, it is not.

The judgment of the Court of Private Land Claims should be affirmed.

Respectfully submitted.

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ABSTRACT OF ARCHIVES.

No. 1. **1820.**

December 31. Archive 1088.

This archive consists of two papers.

The first is a printed proclamation by the Count of Venadito, viceroy of New Spain, dated September 18, 1820, and issued for the purpose of circulating throughout the vice-royalty the royal decree of March 26, 1820, the full text of which is therein included.

This decree imposes penalties upon every Spaniard who refuses to swear allegiance to the political constitution of the monarchy, or who, upon taking the oath, resorts to protests, reservations, or indications contrary to the spirit thereof.

This proclamation is signed with the rubric of the viceroy and the signature of a secretary.

On the margin is a written indorsement in the following words: "Durango, November 2, 1820. Let it be published in the district of the provinces under my command. Alejo Garcia Conde."

The second paper in this archive is a letter from Facundo Melgares, governor of the province of New Mexico, dated December 31, 1820, and directed to the first alcalde of Santa Fe, inclosing a copy of the above proclamation and requiring him to publish it in the territory under his jurisdiction, and to acknowledge its receipt.

A translation of the archive is as follows:

TRANSLATION OF ARCHIVE 1088.

Don Juan Ruiz de Apodaca y Eliza Lopez, de Letona y Lasqueti, Count of Venadito, Grand-Cross of the military and national orders of St. Ferdinand, and St. Hermenegild, commander of Ballaga and Algarga in that of Celatrava and of the decoration of the Lis del Vendé, lieutenat-general of the national army, viceroy, governor, captain-general and superior political chief of this New Spain, subdelegate superintendant-general of the public exchequer, mines, and tobacco bureau, judge-conservator of the latter, president of its board, and subdelegate-general of mails in the same Kingdom, etc.

The following royal order has been communicated to me by the ministry of war.

"Ministry of War.=Most Excellent Sir.=The acting secretary of the government of the Peninsula states to me the following.=Under date of to-day the King has been pleased to direct to me the following decree.=The constitution of the Monarchy, to which I have sworn allegiance, being the fundamental law which regulates the rights and duties of all Spaniards with respect to the Throne, to the nation, and between themselves, and considering that those who refuse to recognize the fundamental law of a State by the act itself renounce the protection of said law, all the advantages of the society that acknowledges it, and even the right to live in its territory, I have decided to declare in conformity with the decree of the general and extraordinary Cortes of August 17, 1812, and with the concurrence of the provisional council (*junta provisional*), that every Spaniard who may refuse to swear allegiance to the political constitution of the Monarchy, or who upon doing so may resort to protests, reservations, or indications contrary to the spirit thereof, is unworthy to be considered a Spaniard, by the act itself

is deprived of all honors, employments, emoluments, and prerogatives proceeding from the civil power, and shall be expelled from the territory of the Monarchy, and, should he be an ecclesiastic, shall moreover suffer the occupancy of his temporalities. And I charge the political chiefs and other constitutional authorities, under the strictest responsibility, with the execution of said decree and penalties. You will have it understood and will direct what is proper for its fulfillment.=It is signed with a rubric.=By royal order I communicate it to your excellency in order that you observe and promptly execute it, publishing it in the province under your command and circulating it to whomsoever it may be proper. God preserve your excellency many years. Madrid, March 26, 1820.=By the same royal order I transmit it to your excellency for the same purposes. God preserve your excellency many years. Madrid, April 2, 1820.=Amarillas.=To the Viceroy of New Spain."

And in order that it may come to the notice of all, and that the decision of His Majesty may be complied with, I command that it be published by proclamation in this capital, and in the other cities, towns, and villages of the Kingdom, copies being circulated to whomsoever it may be proper. Given at Mexico, September 18, 1820.

THE COUNT OF VENADITO. [RUBRIC.]

By command of his excellency:

[Signed]

JUAN IGNACIO NEGREYROS Y SORIA. [RUBRIC.]

DURANGO, *Nov. 2, 1820.*

Let it be published in the district of the provinces under my command.

[Signed] ALEJO GARCIA CONDE. [RUBRIC.]

I herewith transmit to you a copy of a proclamation, including a royal order in relation to the imposing of

penalties upon those who may refuse to swear allegiance to the constitution or who upon doing so may resort to protests or indications, to the end that you publish it in the district under your charge, giving me notice of its receipt and fulfillment.

God preserve you many years.

Santa Fe, Dec. 31, 1820.

[Signed] FACUNDO MELGARES. [RUBRIC.]

To the first appointed alcalde of this capital.

No. 2. **1822.**

Archives 616. April 8. The Maria Nieves Mirabal grant. By the common council of Santa Fe.

This is one of nineteen allotments which had been ordered made by the common council of Santa Fe to settlers at Galisteo. The tract was 100 varas wide and 756 varas long. The possession was given by Pedro Armendaris, first alcalde of Santa Fe. The lands are situated at Galisteo, a town which is still in existence, and it is stated in the muniment that the lands are the same lands which the grantee had been holding under a verbal order of Don Alberto Maynez, who had formerly been an acting governor of the province. Maynez was acting governor some time about 1815–1817.

No. 3. **1822.**

Archive 892. April 8. The Matias Sandoval grant. By the common council of Santa Fe.

This is another one of nineteen allotments ordered made by the common council of Santa Fe to settlers at

Galisteo. The tract was 100 varas wide and 1,000 varas long. It was allotted under precisely the same circumstances as the tract described in archive 616.

No. 4. **1822.**

Archive 893. April 8. The Rafael Sena grant. By the common council of Santa Fe.

This is another one of nineteen allotments ordered made by the common council of Santa Fe to settlers at Galisto. The tract was 100 varas wide and 1,050 varas long. It was allotted under precisely the same circumstances as the tracts described in archives 616 and 892. In this muniment the date of Acting Governor Maynez's incumbency is referred to as being six years prior to the date of the instrument of allotment.

No. 5. **1822.**

Archive 894. April 8. The Felipe Sandoval grant. By the common council of Santa Fe.

This is another of the same kind of allotments as those described in archives 616, 892, and 893, being made at the same place, by the same officer, and under the same alleged authority.

No. 6. **1822.**

May 2. The town of Anton Chico grant. By Governor Facundo Melgares. Reported No., 29. Confirmed by Congress June 21, 1860.

The petition in this case was made by Salvador Tapia, for himself and seventeen others, with a view to obtain-

ing sufficient land to enable them to support their families, and was apparently directed to the common council of San Miguel del Bado.

Upon this petition was indorsed a statement to the effect that although the need and right of the petitioners were recognized, it was not possible to accede to their request, for the reason that the land asked for was without the boundaries of the grant of El Vado; and it was referred to the governor in order that with his consent it might be done as they requested. This statement is signed by Manuel Baca, who appears to have been the constitutional alcalde and president of the common council of San Miguel del Bado.

Following this is an indorsement, signed by Governor Melgares, that it is proper that the petition be made on common paper, and that the common council draw up the expediente and send it to the provincial board (junta de provincia) in order that it be approved, etc.

Following this is an unsigned statement similar in purport to the preceding statement signed by Baca, and apparently being a reference of the matter by the common council of El Vado to the provincial deputation, which was undoubtedly the same body referred to by Governor Melgares as the junta de provincia.

The documents heretofore referred to are originals; and then comes a copy of what purports to be an order of Governor Melgares to the alcalde, Manuel Baca, to place the parties (here referred to as Manuel Rivera and thirty-six men) in possession of the grant they ask for, followed by a copy of what purports to be an act of possession, signed by Manuel Baca as president, and by Jose Miguel Baca as secretary—evidently of the common council of San Miguel del Vado. This act of possession mentions the outboundaries of the tract, but does not show that any allotments were made therein to the thirty-six petitioners; but it does recite certain conditions attach-

ing to the grant, among others these, that the place referred to was to be common not only to the petitioners, but also to all citizens who in the future might congregate there, and that the pastures and watering places were to be common without prejudice to a third party. The originals and the copy above referred to are all dated in 1822.

Then comes an original document dated March 8, 1834, by Juan Martin, an acting constitutional alcalde, who states that by verbal order of the constitutional alcalde, Juan Jose Cabeza de Baca, he placed in possession of lands at Anton Chico the persons named in the document, the lands having been donated some seven or eight years before and entirely abandoned because of Indian attacks. The parties placed in possession are fourteen in number, and their allotments vary in width from 50 to 200 varas, the most of them being 100 varas.

No. 7. **1822.**

1822 or 1823. The Bracito or Hugh Stevenson grant. By Jose Ordas, lieutenant-governor at El Paso. Confirmed by Congress June 21, 1860. Reported No. 6.

The petitioner for this grant began his proceedings as early as 1805 by a petition to Joaquin Real del Alencaster, governor of the province of New Mexico, asking for a tract of land on the Rio Grande, in the southern part of New Mexico, and describing the same by natural objects. He proposed to construct a house and corrals and to cultivate the soil, maintaining a number of armed men for protection against the Indians until the working of mines in the vicinity should attract enough persons to form a permanent settlement. The governor stated that the petition would be considered whenever settlement

should be established in the vicinity of the land asked for. In 1816 the petitioners applied to the commandant-general of the province of Durango for a grant of the lands, stating that he had been in possession of them since 1805, and that a number of persons from El Paso had agreed to accompany him in the formation of a settlement. After two references of this petition to the lieutenant-governor at El Paso, the first of which elicited a favorable report and the second a report somewhat less so, the petitioner in 1817 requested the lieutenant-governor to take no further action on the matter until asked so to do by him.

In 1820 the petitioner again applied to the governor of New Mexico, asking that the grant be made to him alone, as he had been occupying it for eleven years, and the people who had agreed to go with him to establish a settlement had given up the idea on account of the restrictions placed upon the grant. About six months later Facundo Melgares, then governor of New Mexico, declined to make the grant on the ground that he was believed to have even less authority to do so than had belonged to Alencaster, who had refused; and he directed the party to apply to the proper authority, but without stating to whom it was proper to apply.

In 1821 the petitioner again applied to the commandant-general of Durango for a grant of the tract, reciting all the steps taken by himself and the authorities from 1805 up to that date. A recommendation by a comptroller of Durango that the grant be made followed this petition, and testimony of witnesses was taken in April, 1822, by the justice at El Paso, tending to show that the land had never been segregated from the public domain. Other unimportant proceedings were had immediately afterwards, and in 1822 or 1823 the grant was made by Jose Ordas, who was lieutenant-governor at El Paso. No original granting decree is known to be in existence,

but the fact of the making of the grant was proved by testimony taken in 1849, as was also the further fact that a portion of the archives at El Paso, where the originals of all grants were required to be deposited, had been destroyed by United States troops in 1846 during the war with Mexico. It was alleged that this act prevented the claimants from producing all the documents necessary to the establishment of their claim, and upon the favorable report of the surveyor-general of New Mexico, the grant was confirmed by Congress.

While the earlier proceedings indicate an intention to establish a settlement, it appears when the grant was actually made that there was but one grantee, Juan Antonio Garcia, by whose heirs a two-thirds interest in the grant was sold in 1851 to Hugh Stevenson, by whose name the grant is frequently referred to in New Mexico.

No. 8. **1823.**

April 4. The John Heath or Juan Gid grant. By the common council of El Paso. Suit No. 59 in the Court of Private Land Claims. Rejected by Court of Private Land Claims June 26, 1895. Appealed to Supreme Court of the United States, and judgment affirmed. (*Cessna* v. *United States*, 169 U. S., 165.)

This was a grant at the place called El Bracito of a tract of land containing 25 square leagues, made by the ayuntamiento, or common council, of El Paso to Dr. John Heath, whose name appears written in the Spanish documents Juan Gid. The grantee proposed to bring for the settlement of the land thirty families, among which were to be persons of many professions and trades; to establish a hospital and drug store; to build a warehouse supplied with all kinds of merchandise for wholesale;

and to do many other things which he enumerated in his petition.

The proceedings were had under the colonization law of January 4, 1823, but the conditions or requirements attached to the grant were never performed. The concession was revoked by the provincial deputation.

No. 9. **1823.**

July 19. The Casa Colorado grant. By the common council of Tome. Confirmed by Congress December 22, 1858. Reported No. 5.

This grant was made by the ayuntamiento or common council of Tome on the petition of Jose Maria Perea for himself and forty other persons whose names appear written on the margin of the petition, asking that they be given the full possession of certain lands which they had been occupying at a place called Casa Colorada, and setting forth the natural boundaries which they wished to have designated to them. The common council passed upon the petition and resolved that a committee of its members should designate to them the places they asked for as boundaries, and that the proceedings should be forwarded to the provincial deputation for its customary approval. This was done and the action of the council was approved by the deputation. There is no instrument showing in what manner, if any, the lands were allotted among the settlers, but the settlement which was thus formally established is still in existence. It is to be observed that in their petition the applicants refer to the fact that the provincial deputation had ordered the people who were scattered about in the hills and valleys to be gathered together in settlements, in compliance with the provisions of article 16 of the decree of June 23, 1813.

No. 10. **1823.**

December 23. The Preston Beck grant. By the acting political chief, Bartolome Baca. Reported No., 1. Confirmed by Congress June 21, 1860.

This grant was of a very large tract described by certain natural objects, and was made to one person for the purposes of establishing a range for the raising of large and small stock and horses, and also for farming as much land as the water and locality would allow. The petition was directed to the acting political chief, who forwarded it to the provincial deputation with a lengthy approval, stating that if that body saw fit it might make the grant. The deputation resolved that the grant be made, and thereupon it was made by the acting political chief. The possession was not given until 1825, and the alcalde who gave it stated that the grant was made by the territorial deputation. It is to be noted that New Mexico was a province when the grant was made, but became a territory of the Mexican Republic by the law of July 6, 1824.

No. 11. **1824.**

February 27. The Vallecito de Lobato grant. By Bartolome Baca, political chief of New Mexico. Reported No. 108. Suits 142, 204, and 236 in the Court of Private Land Claims. Rejected by Court of Private Land Claims and now on appeal in the Supreme Court of the United States. (*Peabody* v. *United States*, No. 268, October term, 1898.)

In this case the petition was directed to the constitutional alcalde of Abiquiu, by Jose Rafael Samora, for himself and twenty-five other persons. The alcalde

certified that the statements in the petition were true, that the land applied for was vacant, and the applicants were not property owners.

The document, which is alleged to evidence the authority under which the alcalde subsequently acted in giving the possession, is an unsigned rough draft of a letter to that officer, and is claimed to have been the act of Bartolme Baca, the political chief of New Mexico. It is as follows:

"In virtue of your report you may proceed to place Jose Rafael Samora, with the twenty-five persons who join him in his petition, in possession of the lands asks for, in order that he may not lose time in going to work; nor shall you act with the necessary formalities which can not be had now on account of the most excellent deputation, to which body the matter belongs, not being in session.

"I enjoin upon you that in placing them in possession you treat those unfortunate persons with charity, charging them for your work in proportion to their adverse circumstances rather than according to the tariff of fees that is in force.

"God, etc., February 27, 1824.

"To the alcalde of Abiquiu."

It is claimed that the constitutional alcalde of Abiquiu, Francisco Trujillo, placed the interested parties in possession of allotments varying in size from 100 to 150 varas. In the act of possession it is stated that he did this, "in virtue of the decree of Don Bartolome Baca, present political chief of this province, given at Santa Fe on February 27, 1824, upon the petition gotten up by Jose Rafael Samora and his companions," etc.

In addition to the distribution of the alloted lands the alcalde designated the outboundaries of the tract, which included a much larger area than that which was allotted. The settlement thus formed is still in existence.

No. 13. **1824.**

Archive 387. March 28. The Francisco Garcia et al. grant. By Bartolome Baca, political chief of New Mexico.

The petitioners in this case alleged that they had been unjustly dispossessed of lands which had been donated them and of which they had been placed in possession, and prayed that they might again be placed in possession of the property.

The political chief, Bartolome Baca, stated the petition was not admissible, because of its being against the right of the settlers of El Rito, and there not being sufficient water for irrigation, but he hoped that the alcalde and the common council of Abiquiu would help the petitioners at the Riano canyons or somewhere else.

The alcalde thereupon placed some seventeen persons in possession of allotments of agricultural land in the "surplusage of the possession of the Riano canyons." This distribution was made on the 1st of April, 1824. On the 21st of December of the same year Baca approved the distribution of the lands made by the alcalde of Abiquiu.

No. 13. **1824.**

Archive 670. April 12. The José Ignacio Ortiz grant. By Bartolome Baca, political chief of New Mexico.

The petition in this case was made by José Ignacio Ortiz, second alcalde of the city of Santa Fe, to Don Bartolome Baca, political chief of New Mexico, asking that he be given a piece of land which lay back of his residence in said city. The first alcalde was ordered to report on the matter, but stated that it was his opinion that the common council was the body that should make such report. The political chief then referred the petition to

that body, which reported favorably, upon which the political chief ordered the first alcalde to place the petitioner in possession of the land and to draw up at the end of the order the customary document, which was done. There was no indication of intention to cultivate the land, and the grant appears to have been without any conditions whatever.

No. 14. **1824.**

Archive 1090. April 12. The José Ramon Alarid et al. grant. By the provincial deputation.

The only document in this case is a copy made in 1855 of what purports to be a petition made by José Ramon Alarid for himself and fourteen other persons, asking for some pieces of land which, judging from the description, are probably on the Pecos River some miles below the town of San Miguel del Vado, which petition was directed to the constitutional alcalde, Diego Padilla; also a reference of the petition by Padilla to the political chief; also a reference by the latter official to the deputation in these words:

"SANTA FE, *March 26, 1824.*

"Let it be transmitted to the most excellent deputation in order that in view thereof it may decide, as belongs to its powers.

"BACA."

Also a statement by the officers of the deputation showing that on April 12, 1824, the deputation had resolved that the land be granted, and that the applicants apply to the alcalde to place them in possession. This paper shows that the lands were intended for farming purposes, but as there is no act of possession, it is impossible to state what, if any, allotments were made.

No. 15. **1824.**

November 19. The town of Tecolote grant. By the Territorial deputation. Confirmed by Congress December 22, 1858. Reported No., 7.

This grant was made by the Territorial deputation, to which body the petition had been referred by the alcalde, to whom it had been addressed, and after a report made by the political chief, who had been requested to report by the deputation. The applicants were six in number, and the grant was described in the petition by natural boundaries. It was contemplated that the lands should be alloted, but the alcalde, who placed the applicants in possession, says nothing about having made any distribution. This settlement was the beginning of the present town of Tecolote.

No. 16. **1824.**

November 19. The Agua Negra grant. By the Territorial deputation. Confirmed by Congress June 21, 1860. Reported No., 12.

The petition in this case was directed to the Territorial deputation by the wife of Antonio Sandoval, he being absent from New Mexico, asking that he be given a square league of land at a place called Agua Negra for the pasturing of the stock which he had had there for years. The deputation referred the petition to the political chief, who reported favorably thereon, whereupon the deputation made the grant. The commissioner who was authorized to give the possession gave it to the extent of four times the area granted by the deputation.

Sandoval was the only grantee, and no claim was made that he intended to cultivate the land or establish any settlement thereon.

No. 17. **1824.**

November 19. The Pablo Montoya grant. By the Territorial deputation. Confirmed by Congress March 3, 1869. Reported No., 41.

This was a grant made to one person of an immense tract of land for the raising of large and small stock and horses. The petition was directed to the deputation, which body referred it to the political chief, who reported thereon favorably, whereupon the deputation made the grant. There was no act of possession, and the papers appear to have contemplated that there should be none, as the claimant was to take possession of the land by virtue of a copy of the proceedings, which was furnished him by order of the deputation. There is no indication of any intention to use the land for any other purpose than stock raising. The deputation said in making the grant: "It was resolved that the same be granted to him under the conditions heretofore imposed upon other persons receiving grants upon the frontiers of the Indian tribes," but it is not stated what those conditions were.

No. 18. **1825.**

Archive No. 137. February 16. The Juan Antonio Cabeza de Baca grant. By the Territorial deputation.

This grant, although in fact made by the Territorial deputation of New Mexico, was rather in the nature of a regranting of a tract of large area, which in 1821 had been granted to the same petitioner, Luis Maria Cabeza de Baca, by the provincial deputation of Durango, to which body, according to a statement made by Bartolome Baca, the political chief of New Mexico, in a letter to the alcalde of El Vado in 1823, the province of New

Mexico was subordinate in 1821. It appears that the claimant Baca did not have any "document of possession" at the time he made his petition to the deputation of New Mexico in 1825, and evidently had some reason for fearing that on that account the land he claimed under the grant of the deputation of Durango might be granted to another party. His petition in 1821 shows his declared intention of cultivating the land as well as using it for the pasturing of his stock. The deputation of New Mexico in making the grant directed that the documents should be presented to the alcalde at El Vado in order that he place the petitioner in possession. It is not known that the possession was ever given, but there are documents in the archives of the surveyor-general's office at Santa Fe which show that the applicant Baca continued his efforts to have such possession given, at least until January, 1826.

The lands described in this grant were confirmed to the town of Las Vegas in 1860, under a grant made in 1835, and the heirs of Baca were given the right to select other lands of equal area in lieu thereof.

No. 19. **1825.**

March 3. The Esteros grant. By the Territorial deputation. Confirmed by Congress June 21, 1860. Reported No. 16.

This grant was made by the deputation to which body the petition was addressed, after the same had been submitted to and reported upon by the political chief. There was but one grantee, and he stated that he had been in possession of the land petitioned for for the term of nine years. It is doubtful if it was intended to grant more than 1 square league, but the area surveyed and patented under the grant is over 4 leagues.

No. 29. **1825.**

March 3. The Antonio Chavez or Alamillo grant. By the Territorial deputation. Reported No., 79. Suit No. 37 in Court of Private Land Claims. Rejected by Court of Private Land Claims December 4, 1893, and appealed to the Supreme Court of the United States, where the judgment was affirmed. (*Hays* v. *United States*, 170 U. S., 637.)

This was a grant of a considerable tract of land described by natural boundaries made to one person by the Territorial deputation, to which body the petition was directed. The deputation referred the matter to the political chief in order that he should report as to whether the land asked for belonged to the settlements of Socorro and Sevilleta, and in case it did so belong, whether it might be granted without injury to a third party. The report of the political chief was favorable, it being his opinion that not the slightest damage would result to either of the settlements named, but, on the contrary, the settlement under the proposed grant would furnish employment to the poor people of those places. The deputation thereupon made the grant and directed the grantee to apply to the alcalde of Socorro to place him in possession. This he did, and was given the possession by that officer, who designated the natural objects which were to serve as boundaries. There is no doubt that a portion of the land granted had up to that time been claimed as belonging to the settlements of Socorro and Sevilleta, that is to say, the lands were within the exterior boundaries of those tracts as the same were claimed by their respective inhabitants, but in making this grant there was no intimation that it was intended to be an allotment under either of the prior claims; on the contrary, portions of the lands claimed by each were taken from them and incorporated into the new grant to Chavez.

No. 21. **1825.**

Archive 60. March 3. The Juan Antonio Armijo et al. grant. By Diego Padilla, first alcalde of San Miguel del Bado.

This was a case in which half a dozen persons who had been placed in possession of lands at the pueblo of Pecos by the alcalde of El Vado, who purported to have proceeded under an order of the political chief, Bartolome Baca, which had been presented to him by the principal petitioner, asked that the Territorial deputation should approve the possession thus given. The deputation stated that, notwithstanding it was not the place of said alcalde to adjudicate lands, in virtue of the manifest poverty of the persons making the petition, it had decided to approve the deeds (hijuelas) of the allotments made by that officer. Five of these deeds are attached to the other papers, and a note states that a certified copy of the whole expediente had been furnished the parties.

No. 22. **1825.**

Archive 135. March 3. The Rafael Benavides et al. grant. By the Territorial deputation.

In this case the petition was presented by five persons, asking for lands for cultivation, which lands were described by natural boundaries and said to have been left uncultivated for many years by the Indians of Pecos, to whom they had belonged. The grant was made, with the boundaries recited in the petition, the only condition imposed being that the grantees were to present to the committee which had been appointed by the deputation to distribute the lands at Pecos, the certified copy of the expediente, with a view to being placed in possession. There is nothing to show whether the possession was ever given.

No. 23. **1825.**

Archive 807. March 3. The Miguel Ribera et al. grant. By the Territorial deputation.

The petition in this case was presented to the deputation by Miguel Ribera for himself and five other persons, claiming that he and his companions had been ejected from lands which had formerly been given them by order of the political chief, and that said lands had been sold by the Indians of the pueblo of Pecos. The petitioners asked that they be given certain lands adjoining those sold by the Indians, and which they describe by natural boundaries.

The deputation made the grant, with the boundaries asked for, and stated that if the Indians had made sales of any lands within those boundaries that the same should be null and void.

No. 24. **1825.**

August 20. The Talaya grant. By Severino Martinez, alcalde at Taos. File No., 86.

This petition was directed to the constitutional alcalde and the common council of Taos, asking that the two persons whose names are signed thereto, and also those who appear in an "accompanying list" be placed in possession of lands suitable for tillage, at a place called La Talaya, which apparently is somewhere in the vicinity of the settlement of Arroyo Hondo, north of the town of Taos. The "accompanying list" is not with the papers in the case.

The possession was given by Severino Martinez, the alcalde at Taos, by order of the common council, to thirty-six persons, to eight of whom were allotted 100

varas each, and to the others 50 varas each; but the grantees' names are not given.

The alcalde says that no application was made to the deputation to approve this proceeding, for the reason that that body had previously granted the land to other persons; but the latter had failed to cultivate it. The alcalde further says that the grant was made without prejudice to the first settlers of Arroyo Hondo, who were dependent on the waters of that stream; that the cultivated lands were to be fenced in common, and that the roads and watering places were to have sufficient room for the stock.

No. 25. **1826.**

March 16. The Maragua grant. By the Territorial deputation. Reported No., 121. Suit No. 276 in the Court of Private Land Claims. Rejected by the Court of Private Land Claims October 4, 1898.

The petition in this case was made by three persons and directed to the deputation, asking for a piece of tillable land, which they described by natural boundaries and estimated to be about 1,000 varas wide and 4,000 varas long.

The deputation referred the matter for report to the common council of Santa Fe, which body referred it to the attorney of the municipality. This official made a report suggesting the conditions that should be imposed upon the applicants, whereupon the common council reported favorably upon the petition, and the deputation made the grant. The alcalde of Santa Fe placed each of the parties in possession of a strip of land 500 varas wide, setting forth the natural boundaries of each piece. There is nothing in the papers to indicate that these allotments were made under some prior grant, but rather

that they were made within a territory over which the common council of Santa Fe exercised a provisional control.

No. 26. **1826.**

March 16. Grant to the residents of Las Trampas. By the Territorial deputation. The evidence of the making of this grant is found in the surveyor-general's office at Santa Fe in the journal of the proceedings of the Territorial deputation, folio 106.

Nothing is known of this claim except that a petition of various residents of Las Trampas, asking for lands, was laid before the deputation and that body thereupon made the grant as asked for; it being resolved that the proper justice should place the parties in possession of the lands, but it being provided, also, that no one should be compelled to go to settle at the place granted.

No. 27. **1826.**

March 17. Grant to Simon Saenz. By the Territorial deputation. The evidence of the making of this grant is found in the surveyor-general's office at Santa Fe, in the journal of the proceedings of the Territorial deputation, folio 106.

The entry in the journal in regard to this grant is as follows: "There was taken up for action a petition by the citizen Simon Saenz, a resident of Taos, in regard to possession of lands at the Arroyo Hondo. It was discussed and then resolved that this petition be transmitted to the alcalde at Taos, in order that he give to

this party the possession he asks for; notifying him that he must be given possession gratuitously, in accordance with article 15 of the decree of January 4, 1813, enacted by the Cortes of Spain and in force at this date."

No. 28. **1826.**

Grant to Cristobal Jaramillo. April 12. By the Territorial deputation. The evidence of the making of this grant is found in the surveyor-general's office at Sante Fe in the journal of the proceedings of the Territorial deputation, folio 111.

The petitioner asked to be placed in possession of lands either at San Antonito or at Nuañes, and the common council of Albuquerque had reported on the matter. The deputation decided that the constitutional alcalde of Albuquerque should place the petitioner in possession of one of the two tracts, but without prejudice to third parties.

No. 29. **1826.**

July 28. The Orejas del Llano de los Aguajes grant. By Antonio Narbona, political chief of New Mexico. Reported No. 117. Suit No. 169 in the Court of Private Land Claims. Rejected by the Court of Private Land Claims December 1, 1896.

The muniments on which this claim is based are forgeries, but that question was not passed on by the Court of Private Land Claims, the rejection being on legal grounds.

It has been claimed that the papers in this case show that the petitioner presented his application to the alcalde

of the jurisdiction of Abiquiu, asking for a tract of land described by natural boundaries; that the alcalde forwarded the petition to the political chief for his action; that the latter ordered the alcalde of Abiquiu to place the petitioner in possession; that the alcalde complied with the order, designating the natural objects that were to constitute the boundaries of the tract; that subsequently to the act of possession the political chief, who had ordered the giving of possession, reconsidered and regranted the land.

No. 30. **1827.**

March 17. Manuel Rivera grant. By Territorial deputation. Lands situate on Arroyo Hondo near Santa Fe.

Grant made for farming purposes to one person in accordance with the report of the common council of Santa Fe. Extent of land is not stated, but the deputation says the party was to be placed in possession of as much land as he could reasonably be expected to cultivate, and completely subject to the conditions dictated. It does not appear what these conditions were. The only evidence of this grant appears in the journal of the Territorial deputation, at folio 144.

No. 31. **1827.**

April 20. Francisco Perez Serrano grant. By Territorial deputation. Lands situate on Arroyo Hondo, near Santa Fe.

Extent not shown, but the grant was made evidently in the face of an unfavorable report by the common council of Santa Fe, but was to be without prejudice to any

person having a legal right and who might be able to prove that, contrary to the views of the deputation, the land had not been abandoned for more than twenty years prior to the date of the grant. It was probably a small grant for farming purposes similar to the one made to Rivera. See journal of Territorial deputation, folio 148.

No. 32. **1827.**

August 9. E. W. Eaton grant. By Territorial deputation. Reported No., 19. Confirmed by Congress June 21, 1860.

This grant was made to twenty-five or more persons to whom lands were allotted with the understanding that they were to have "the same right with the rest of the public to pasture their animals in the vicinity thereof." The allotments were either at or near the present town of Galisteo, where other allotments had been made as early as 1816, and which latter have been recently confirmed by the Court of Private Land Claims in suit No. 54, Town of Galisteo grant, so called.

No. 33. **1828.**

August 13. Isleta grant. By Juan Antonio Arce, governor of the State of Chihuahua. Suit No. 33 in Court of Private Land Claims. Rejected by Court of Private Land Claims, September 27, 1894.

This was a grant to the pueblo of San Antonio de Isleta, now a town in the State of Texas, for a very large tract of land, a portion of which lies in New Mexico. The town of Isleta obtained from the State of

Texas, in 1854, a confirmation of a claim for more than 8,000 acres, upon which the town is situate, based upon a grant made by the Spanish Government in 1751; and the grant of 1828 was to be used in common by the inhabitants of the town for purposes of pasturage.

No. 34. **1828.**

December 11. Canada de las Mestenas grant. By Vicente Trujillo, constitutional alcalde of the pueblo of Taos. File No. 82 in the surveyor-general's office, and suit No. 163 in Court of Private Land Claims. Rejected by Court of Private Land Claims, appealed to the Supreme Court, and appeal there dismissed.

This grant was made to eleven families, to each of which was allotted a strip of land from 100 to 232 varas in width. The alcalde says that in making the grant he was governed by the decree of 1813, and that he signed the muniment by virtue of his office and the authority conferred upon him by law. There is nothing to show that he gave the possession by virtue of any order from superior authority; but the muniment indicates that the object of the grant was to give the allotments to persons who would cultivate them, and that any allottee failing to do this was to be ejected from the property.

No. 35. **1829.**

November 28. Town of Manzano grant. By Territorial deputation. Reported No., 23. Confirmed by Congress June 21, 1860.

This grant was made to about one hundred persons who had settled on the lands asked for prior to the presentation of their petition to the common council of Tome,

upon the report of which body the territorial deputation directed that the parties be placed in possession of the lands applied for, giving to each the tillable land he might be able to cultivate, and making provision for allotting lands to other persons who subsequently might join the settlement. The town of Manzano is still in existence.

(House Ex. Doc. 14, Thirty-sixth Congress, first session, p. 65.)

No. 36. **1830.**

May 18. La Gotera grant. By Territorial deputation. Reported No., 56, and suit No. 83 in Court of Private Land Claims. Rejected by Court of Private Land Claims.

The petition for this grant was directed to the deputation, which body referred it to the common council of Santa Fe for report, upon the rendition of which report the deputation made the grant to the seven petitioners, to five of whom were allotted strips of land 500 varas in width, and to the remaining two strips of 100 varas each, the land allotted being the only land granted, and the object of the grant being the promotion of the agricultural interests of the country.

(Mis. Doc. 181, Forty-second Congress, second session, p. 50.)

No. 37. **1831.**

November 12. Nerio Antonio Montoya grant. By Territorial deputation. Reported No., 51, and suit No. 20 in the Court of Private Land Claims. Rejected by Court of Private Land Claims March 25, 1896, and now pending on appeal in the Supreme Court.

This grant is involved in the case at bar.

No. 38. **1832.**

March 14. Arkansas or Beales Colony grant. By State of Coahuila and Texas. File No., 100. See *Interstate Land Co.* v. *Maxwell Land Grant Co.*, 139 U. S., 569.

This was an empresario grant or a contract between the State of Coahiula and Texas and two contractors who, under the provisions of the law of colonization of said State, dated March 24, 1825, engaged to settle within certain described limits a colony of two hundred families, in consideracion of which they were to receive certain lands. The colony was never established.

No. 39. **1832.**

July 20. Tierra Amarilla grant. By Territorial deputation. Reported No., 3. Confirmed by Congress June 21, 1860.

This grant was made to a number of persons after their petition therefor had been referred by the political chief of the Territory to the Territorial deputation, and by that body to the common council of Abiquiu, which latter body reported favorably thereon, estimating that the land applied for was capable of supporting five hundred families. The deputation in making the grant directed the alcalde of Abiquiu to deliver to each one of those who might join the petitioners a certain number of varas of land, on which, in his opinion, they could sow 4 or 5 fanegas of wheat; and also added that the pastures, watering places, and roads were to be free, according to the "custom prevailing in all settlements."

No. 40. **1832.**

July 28. Rio de Picuris grant. By Territorial deputation. File No., 71; suit No., 65 in the Court of Private Land Claims. Rejected by Court of Private Land Claims September 15, 1894.

This grant was made upon the favorable report of the common council of Taos, and under it an allotment was made to 42 families of strips of land varying in width from 50 to 150 varas, the pastures, watering places, and roads being free, "as has been and is customary in every settlement that is made." The settlement so formed is still in existence.

No. 41. **1833.**

Some time in this year, not known exactly. Town of Cubero grant. By Francisco Sarracino, political chief of New Mexico. Suit No. 1 in Court of Private Land Claims. Confirmed by Court of Private Land Claims August 29, 1892; appealed to the Supreme Court and judgment affirmed. (*United States* v. *Chavez*, 159 U. S., 452.)

This was a grant to sixty-two persons, who by virtue thereof founded the present town of Cubero, and who, according to the allegations of their petition, distributed the lands among themselves "in accordance with the laws and customs of the Mexican Government." The Court of Private Land Claims in its decree called the grant a "colony grant."

No. 42. **1833.**

December 18. Ortiz mine grant. By Francisco Baca y Ortiz, first alcalde of Santa Fe. Reported No. 43. Confirmed by Congress March 1, 1861.

This was a grant of three mining claims to two persons, with a privilege to the use of the waters and pasturage over an area of 16 square leagues. The grant was made under the old Spanish mining ordinances of 1783.

No. 43. **1834.**

March 7. Town of Tajique grant. By Francisco Sarracino, political chief of New Mexico. Reported No. 21. Confirmed by Congress June 21, 1860.

This was a grant to twenty persons of a tract of land at a place called Tajique. The area included within the natural objects named by the alcalde as the boundaries of the grant was over 7,000 acres. Within these boundaries there was allotted to each grantee a strip of agricultural land 112 varas wide. The town of Tajique which was thus formed is still in existence.

It is to be noted that Sarracino made this grant provisionally, in order not to delay the planting of crops, stating that it was to be understood that when the deputation should meet it would confirm the possession which the alcalde of Valencia was ordered to give.

(House Ex. Doc. 14, Thirty-sixth Congress, first session, 46.)

No. 44. **1835.**

March 25. Town of Las Vegas grant. By Territorial deputation. Reported No. 20. Confirmed by Congress June 21, 1860.

This grant was made originally to twenty-nine persons for the purpose of establishing a settlement at a place then known as Las Vegas Grandes, on the Gallinas River. The area within the exterior boundaries was nearly 500,000 acres, but the original grantees were located upon the river, where allotments of tillable lands were made to them. The grant was made not only to the petitioners and the residents of the town of El Vado, but also to any one who might need lands to cultivate, and allotments were made at different times subsequent to the first allotment, and to many persons. The unallotted lands were used in common for the pasturage of stock and for obtaining timber and firewood. The settlement established under this grant formed the nucleus of the present modern town of Las Vegas.

(House Ex. Doc. 14, Thirty-sixth Congress, first session, 16.)

No. 45. **1835.**

September 28. Town of Mora grant. By Albino Perez, political chief of New Mexico. Reported No. 32. Confirmed by Congress June 22, 1860.

More than seventy persons were placed in possession of allotments within the natural objects named as outboundaries by the alcalde of San Jose de Las Trampas on October 20 and 21, 1835, and that officer states that this was done in compliance with a decree of the politi-

cal chief of the Territory, Don Albino Perez, dated September 28, 1835. Upon a copy of the act of possession the surveyor-general based his approval of the grant and it was thereupon confirmed by Congress; but there is good reason to believe that many other allotments were subsequently made within the outboundaries recited in the act of possession or distribution of October 20 and 21, 1835. The town of Mora and a number of villages are situate on this grant as confirmed and patented. The unallotted lands were enjoyed in common, as in the case of other like grants.

(House Ex. Doc. 14, Thirty-sixth Congress, first session, 180.)

No. 46. **1835.**

Archive 268. October 22. Jose Silvestre Estrada grant. By Manual Antonio Sanchez, alcalde of Las Trampas.

This archive is dated on October 7, 1844, and is a revalidation on stamped paper of a document dated October 22, 1835, which was on paper not stamped, and which evidently was the muniment presented to Estrada as an evidence of his title to an allotment of 1,150 varas of land within the outboundaries of the Mora grant; but this particular archive was not before the surveyor-general at the time he passed upon that grant. The alcalde, Sanchez, who executed the original paper to Estrada, is the same officer who made the distribution to the seventy-odd persons on October 20 and 21, 1835, in compliance with Perez's decree of September 28, 1835, and in this case also he refers to the same as authority for his action.

No. 47. **1836.**

February 25. Petaca grant. By Albino Perez, political chief of New Mexico. Reported No. 105. Suits Nos. 99, 153, and 233 in the Court of Private Land Claims. Confirmed by Court of Private Land Claims September 5, 1896. Now pending on appeal in the Supreme Court of the United States (*United States* v. *Pena*, No. 293, October term, 1898).

This grant was made to a small number of persons, only three being mentioned by name in the petition, but more than thirty were placed in possession of strips of land of 150 varas in width, with a common right in the woods, pastures, and waters. A distribution of lands was made within the outboundaries designated long subsequent to the date of the distribution of 1836, and when the Court of Private Land Claims confirmed the grant it confirmed it to persons who were named in a list of 1848, some of whom had been allottees under the proceedings of 1836.

The grant was made by Perez after the petition (which had been directed to the common council of Ojo Caliente) had been acted upon by that body, which, judging from its report, evidently expected that the deputation would act in the premises.

(Senate. Ex. Doc. No. 31, Forty-fourth Congress, first session, p. 3.)

No. 48. **1836.**

June 23. Canon del Rio Colorad grant. By the common council of Taos. Reported No. 93. Suit No. 166 in the Court of Private Land Claims. Rejected by Court of Private Land Claims November 30, 1896. Appealed to the Supreme Court and appeal there dismissed.

This grant was made by the common council of Taos

to three persons who had asked for it as a tract upon which they wanted to keep animals. There is nothing in the papers to show that there was any intention on the part of the applicants to cultivate any portion of it, or that the land granted was considered as an allotment under some grant previously made, although the latter theory was attempted to be established by claimants at the time of the trial in the Court of Private Land Claims, but in this they entirely failed.

No. 49. **1837.**

Archive 631. March 7. The Miguel Mascarenas grant. By Juan Nepomuceno Trujillo, alcalde of LasTrampas.

The muniment is a revalidation on stamped paper, dated October 8, 1844, of a document on paper not stamped, dated March 7, 1837, which latter was the evidence of title of Miguel Mascarenas to 200 varas of land allotted to him within the outboundaries of the Mora grant, and evidently under the general authority of the decree issued by the political chief, Albino Perez, on September 28, 1835.

No. 50. **1837.**

March 9. The Guadalupita grant. By Juan Nepomuceno Trujillo, alcalde of Las Trampas. Reported No. 152. Suit No. 131 in the Court of Private Land Claims. Rejected by Court of Private Land Claims November 24, 1896.

The petition for this grant was made by three persons and directed to the alcalde of Las Trampas and to the

common council. The petition indicates that it was made not only in the interest of three parties who signed it but also on behalf of other persons whose names appeared on a list which accompanied it, but which is not found with the papers now on file in the surveyor-general's office. The alcalde states in what has been called the *grant* that as the land applied for was in his jurisdiction, he made it known to the principal men at the valley of Santa Gertrudis de lo de Mora, and that as no injury would result to any third party they assented to the petition. He then ordered the *colonists*, as he calls the petitioners, to appear by the 7th of the next April, presumably for the purpose of being placed in possession. There is no documentary evidence of this having been done, although it was claimed by plaintiffs in their pleadings before the Court of Private Land Claims that possession was actually given. A very large part, if not all, of this grant is within the outboundaries of the Mora grant, and it was doubtless intended to be a series of allotments under that grant, although it is not positively known that such allotments were actually made.

No. 51. **1837.**

Archive 1244. March 13. Unsigned draft of a grant to Antonio Armijo and seventy families of lands at the junction of the Sapello, Mora, and Coyote rivers.

In exercise of the power which is granted me by article 1 of the regulations issued on the 21st of November, 1828, under the law of the 18th of August, 1824, and in view of compliance with the requirements provided in said regulations in the various articles thereof, and the land known under the name of The Junta de los Rios, Sapello, Mora, and Coyote being comprehended by

them, it being thus to the interest of the best service of the Mexican Nation, and to the particular service of this Territory, according to the petition of citizen Antonio Armijo, who, for himself and in union with seventy families that are set out in the accompanying list of names, desires to settle upon and cultivate that land, after examining the report made by the common council of El Bado, under date of November 6, of the preceding year of 1836, I have seen fit to grant said land to said Armijo and associates, in the name of the supreme powers of the nation, as there is no opposition or impediment according to the sixteen articles included in the law of the 18th of August, 1824, already cited, and with commendable preference to a Mexican citizen, and the more so as no foreigner is found in the petition, saving the formalities prescribed in article 5 of said regulations, inasmuch as the most excellent deputation is in recess, and reserving the provisions of article 6 of said regulations, I issue this title under article 8, in absolute conformity with the laws on the matter, and designate five months, counted from the date of this document, as the specific and indispensable term for the settlement and cultivation of said land, so that, if in said time, any considerable part or all of them shall not have complied with the settlement or occupation, it shall fall under the penalty of forfeiture and the right to a new denouncement on the part of another, under the provisions of law 11, book 4, title 12, article 4 of the Royal Instructions of the 15th of October, 1754, and the provisions of article 11 of said regulations, so that in its case the grant shall be void, the Government reserving the right to make use of the authority to revalidate it in the case stated, granting to each head of family 200 varas of land, for farming, in the narrow part of the land and in the widest portion 100 varas, to which end the constitutional alcalde of Bado, in rigorous compliance with the laws, will be

present at the allotment of the land to issue the main deed of donation, the particular deeds of the individuals, and to return to this Government the main original proceedings, with the plat of the land granted, in conformity with the provisions of article 9 of said regulations, requiring of the principal contractor, who is Citizen Antonio Armijo, the obligation provided for in article 10 of said regulations, the new settlement to be subject, in civil matters, to the jurisdiction of Bado, with the other provisions of the laws and regulations in the matter.

Given at Santa Fe, New Mexico, on the 13th day of the month of March, 1837.

(Unsigned.)

No. 52. **1837.**

October 16. The Alvarez grant. By Manuel Armijo, governor of New Mexico. Reported No., 143. Suit No. 231 in the Court of Private Land Claims. Rejected by Court of Private Land Claims October 5, 1898.

This was a grant made to one individual, who, in petition for it, stated his object to be the raising of stock, principally sheep, which he expected to improve by the introduction of Merinos; and the grant was made to him upon a condition suggested by himself, that within three years he was to carry into effect the enterprise of raising Merino sheep. Possession of a large tract within certain natural boundaries was given the applicant by an alcalde, but it is understood that the condition imposed by the governor was never fulfilled. There is no evidence in the case that the grant was an allotment under a prior grant or that its object was anything more than above indicated.

No. 53. **1838.**

March 14. The Jose Sutton grant. By Manuel Armijo, governor of New Mexico. Reported No., 45. Suit No. 143 in Court of Private Land Claims. Rejected by Court of Private Land Claims December 20, 1898.

This was a grant made to one person, for a tract of land of 16 square Spanish leagues, or more than 69,000 acres, for the purpose of constructing thereon, within three years from the date of being placed in possession, a factory of ordinary woolen fabrics and commencing the raising of Merino sheep. The grantee was to be placed in possession whenever he saw fit, but he never applied to anyone to place him in possession, and failed to fulfill any condition attached to the grant. It was an absolute grant upon the conditions described.

(House Ex. Doc. 112, Thirty-seventh Congress, second session, p. 4.)

No. 54. **1838.**

September 18 and November 25. Rancho de la Hermosa Estrella grant. By Juan Antonio Garcia and Jose Francisco Sandoval, justices of the peace. File No., 34 in surveyor-general's office.

This claim had its origin in two distinct titles dated as above. The first was a title to land which had been previously given to someone else by the alcalde, Manuel Sanchez (who made the first allotment under the Mora grant), and which had not been cultivated within the time fixed in the colonization laws. The justice of the peace, Garcia, in making this new allotment of the land, refers to the same authority under which the original allotment had been made, viz, the decree of September 28, 1835, by the political chief, Albino Perez.

The second title was for another piece of land, granted by the justice of the peace Sandoval to Bautista Llara, by virtue of a decree of the prefect of the northern district, Juan Andres Archuleta.

Both of these tracts were within the Mora grant, and evidently allotments thereunder. They finally became the property of one person, who conferred upon the ranch thus formed the name Hermosa Estraella, under which the claim was filed in the surveyor-general's office.

No. 55. **1839.**

March 22. Sanguijuela grant. By Santiago Ulibarri, constitutional alcalde of San Miguel del Vado. Alleged to have been approved by Manuel Armijo, governor of New Mexico, on May 8, 1842, and granted anew by him on October 3, 1843. Suit No. 170 in Court of Private Land Claims. Rejected by Court of Private Land Claims June 7, 1898.

This grant was made in 1839 to five persons, who in their petition therefor stated it was within the boundaries of the Las Vegas grant. The alcalde in making the grant stated that the petitioners should observe and comply with all the requirements that the law of colonization prescribed. The Court of Private Land Claims in rejecting the grant did so on the ground that the title papers presented were inadmissible as evidence. It does not appear that this grant was intended as an allotment under the grant to the town of Las Vegas, but rather it was made by the exercise of that power of control and disposition over lands assigned to a town, but undisposed of, which was frequently employed under the Mexican Government in New Mexico, where the granting of lands within the outboundaries which had been assigned to a town or community would not result in injury to the latter.

No. 56. **1839.**

August 23. San Pedro grant. By Don Antonio Sandoval, prefect of the second district of the Department of New Mexico. Reported No., 14. Confirmed by Congress June 21, 1860.

This grant was made to eight persons, although the original petition was made in the interest of a greater number and was directed to a prefect who referred it for report to the justice of the peace of Bernalillo, upon the receipt of which report the prefect ordered the justice to place the parties in possession. This was done by giving to each 300 varas of land for cultivation within certain outboundaries containing a much greater area. In 1845 Governor Armijo, in adding another league to the grant, also approved the former grant of 1839 and the possession subsequently given thereunder. The grant was evidently made with a view to the establishment of a settlement. In asking the addition of a league to the grant in 1845, the petitioners asked that it be given them in consequence of the grant, petition, and colonization laws of January 4, 1813, and August 18, 1824. It is also to be observed that the justice of the peace, Pedro Jose Perea, in executing to the settlers in 1844 a sort of revalidation of the act of possession of 1840, says that the decree of January 4, 1813, was in force in the Mexican Republic.

(House report 457, Thirty-fifth Congress, first session, p. 210.)

No. 57. **1839.**

December 18. Los Chupaderos de la Lagunita grant. By Damasio Salazar, justice of the peace at San Miguel del Vado. Suit No. 113 in Court of Private Land Claims. Rejected by Court of Private Land Claims, January 25, 1898.

This was a grant to one person of a half league of land to enable the applicant to cultivate a small tract and to pasture the few stock he had, but without an exclusive right to the watering places. There is nothing in the case to show that this was an allotment under any other grant now known, but the land in question was evidently within the territory over which the justice of the peace of San Miguel del Vado exercised jurisdiction.

No. 58. **1840.**

March 23. Juan Salas or Los Alamitos grant. By Governor Manuel Armijo. Reported No., 69. Suits 91 and 183 in Court of Private Land Claims. Confirmed by Court of Private Land Claims, and now pending on appeal in Supreme Court. (*United States* v. *Catron*, No. 199, October term, 1898.)

This grant was made for purposes of cultivation to twelve persons, to each of whom an instrument was given describing the allotment of which he became the owner; but this was not done until Governor Armijo had submitted the petition to the common council of Santa Fe, which made thereon favorable report. And it appears from the whole proceeding that while the lands granted and allotted were not within the boundaries of any grant

of which they were acknowledged to be a part, they were within the Territory over which the common council of ayuntamiento of Santa Fe exercised some sort of control. The cultivated lands were to be fenced as a protection against stock belonging to the people of the city of Santa Fe and vicinity.

(Senate Ex. Doc. 37, Forty-second Congress, third session, p. 10.)

No. 59. **1840.**

June 8, 1840, and February 24, 1846. Juan Ortiz grant. By Felipe Sena and Jose Albino Chacon, constitutional justices. File No. 5 in surveyor-general's office.

Although filed as one claim in the surveyor-general's office, this is really two claims, the first being an allotment of 300 varas at El Vadito and the second an allotment of 50 varas at Cadillal, the former being within the outboundaries of the Vadito and the latter within those of the E. W. Eaton grant, reported No. 19, confirmed by Congress.

No. 60. **1840.**

June 12. Canada de San Francisco grant. By Juan Andres Archuleta, prefect of the first district of the department of New Mexico. Reported No. 57. Suit No. 98 in Court of Private Land Claims. Rejected by Court of Private Land Claims April 24, 1894.

The papers in this case are incomplete, so that it is impossible to tell how many persons were placed in possession, but the testimony indicates that there were per-

haps eight or nine grantees, and that the tract was distributed among them in allotments of 100 and 200 varas in width. The prefect made this grant upon the favorable report of the common council of Santa Fe, to which body the petition was directed. The land in question is on the Galisteo Creek and within the territory over which the common council of Santa Fe exercised a control.

No. 61. **1840.**

June 20. Rio del Oso grant. File No. 112. Suit No. 177 in Court of Private Land Claims. By Juan Andres Archuleta, prefect of the first district. Rejected by Court of Private Land Claims May 17, 1897.

The possession was given by a justice of the peace, who states that he acted by virtue of an order of the prefect of the above date, to whom the petition had been directed by Jose Antonio Valdez, for himself and six others, whose object was to obtain for cultivation lands situate on the Oso River. The petitioner Valdez and ten companions were placed in possession of allotments varying in width from 115 to 287 varas, within certain exterior boundaries. The justice names certain conditions under which the grant was made, such as the fencing of the tillable lands, the road was not to be closed up, the watering places were to be in common, the ditch for irrigation was to be worked by all the settlers in common every year, and always with a view to increasing the area under cultivation, even if only done in the interests of one or more persons. Although the lands allotted were entirely within the boundaries of the Juan Jose Lobato grant, which has been confirmed by the Court of Private Land Claims, there is nothing to show that the allotments were made under that grant.

No. 62. **1840.**

July 31. Dona Ana Bend Colony grant. By Francisco Garcia, governor of the State of Chihuahua. Reported No. 85. Suit No. 24 in the Court of Private Land Claims. Confirmed by Court of Private Land Claims March 25, 1896. Appealed to the Supreme Court and appeal there dismissed.

This grant was made to a large number of persons for the purpose of establishing a colony, with allotments to the settlers, who had a common right in the pasture and woodlands, etc. The inhabitants of this grant now number several thousands.

No. 63. **1840.**

December 15. Rumaldo Ariveche grant. By Antonio Montoya, justice of the peace. File No. 75.

This is an allotment to one person, made under some order emanating from a source not known. The land is probably situated within the boundary lines of the existing survey of the Tejon grant, reported No. 37, which was confirmed by Congress, June 21, 1860.

No. 64. **1841.**

January 11. Maxwell grant. By Manuel Armijo, governor of the department of New Mexico. Reported No. 15. Confirmed by Congress, June 21, 1860. (House Report 457, Thirty-fifth Congress, first session, p. 237.)

This was a grant for a tract of land containing more than 1,700,000 acres, made to two persons, who proposed

to devote it to the cultivation of sugar beets and the raising of stock, and in time to erect thereon factories of cotton and woolen goods. There are indications in the papers that the departmental assembly understood that it was the intention of the grantees also to establish a colony, they having offered lands to a number of persons who were to settle there. Governor Armijo made the grant "in conformity with the laws," but he does not cite any particular law.

No. 65. **1841.**

March 3. Town of Torreon grant. By Antonio Sandoval, prefect. Reported No. 22. Confirmed by Congress, June 21, 1860.

This was a grant of a tract of land containing more than 14,000 acres, made to twenty-seven petitioners, to whom allotments in severalty were made of the tillable land, all having a common right in pastures, woodlands, water, etc. The settlement thus established is still in existence. The prefect made the grant after having referred the petition for report to the justice of the peace of the town of Tome. This grant mentions the Nerio Antonio Montoya rancho as western boundary.

No. 66. **1841.**

March 20. Town of Chilili grant. By Governor Manuel Armijo. Reported No. 11. Confirmed by Congress, December 23, 1858.

This was a grant to twenty-seven persons, of a tract of land described by natural objects, within which the petitioners, who are referred to as colonists, were to be

Fray Francisco de Vargas, having appointed a minister doctrinarian to the mission of the Teguas of the pueblo of Nambe, proceeded with him to give him the possession, and, having entered the said pueblo, its people were assembled to receive me with all politeness, and they being in front of the principal site where they had the chapel and the house adjoining the same for the said minister, I dismounted, and, through the interpreter, I told them that I had come to install the father who was to aid them and administer the holy sacraments, he being the reverend father preacher, Antonio de Azevedo, and in the said form I gave him possession of the said chapel and house, and in testimony of the same I directed that the doxology, &c., be prayed and sung three times, and I ordered the said Indians to aid him in all things and to fulfil their obligations as Christians and to fail in nothing; and in order that the said possession and the reply of the said natives that they would comply with and obey all that I had ordered might appear of record, I signed it, with my civil and military secretary.

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]

Before me:

ALPHONSSO RAEL DE AGUILAR, [Rubric.]
Civil and Military Secretary.

92 Arrival of the families which by order of his excellency the Conde de Galve were procured and obtained by Captain Juan Paez Hurtado, chief commissioner, appointed by me, the said governor and captain-general.

In this city of Santa Fe, the capital of this kingdom and provinces of New Mexico, on the ninth day of the month of May of the present year of one thousand six hundred and ninety-five, there arrived at this city of Sante Fe, capital which it is of this kingdom and provinces of New Mexico, the families which by order of his excellency the viceroy, the Conde de Galve, with the approval of the general committee of the ministers of the royal treasury and war, in March of the past year of one thousand six hundred and ninety-four, ordered me, the said governor and captain-general of this kingdom, to send a chief commissioner possessing my confidence, to be appointed by me, and Captain Juan Paez Hurtado possessing the same, I gave him the commission and appointment in order that he might carry out the said orders of his excellency the said viceroy, and he proceeded to the kingdom of Gallicia and the Real de Zacatecas and other places, and the families which he procured were forty-four, according to the list made of the same and which I, the said governor and captain-general, received in person, and in the presence of the said captain chief commissioner I gave them lodgings in the said city in the houses which the settlers now at the villa nueva de Santa Cruz had occupied, and in or' that the said arrival may appear of record I signed it, with the said captain chief commissioner and my civil and military secretary.

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON .[Rubric.]

Before me:

ALPHONSSO RAEL DE AGUILAR, [Rubric.]
Civil and Military Secretary.

BLEED THR

93 Act of transmittal.

In this said city of Santa Fe, on the said day of the date May nine and year one thousand six hundred and ninety-five, I, the said governor and captain-general, Don Diego de Vargas Zapata Lujan Ponze de Leon, having examined these proceedings, in order that his excellency the viceroy, Cond' de Galve, which he is of all this kingdom of New Spain, may be informed of what has been done in this said kingdom in the royal service, in which I, the said governor and captain-general, have devoted the care and attention necessary for his satisfaction, and in order to make transmittal of the same I directed my civil and military secretary to make a literal copy of the said proceedings, as well as of the letter of transmittal with this said decree, in order that being, copied and compared in due form the same transmitted and forwarded to his excellency the said viceroy, and more particularly because the courier despatched on the fourteenth of January of the present year has not returned and the cause of his delay is not known. And I signed it in this said city of Sante Fe on the said day, month, and year, with my civil and military secretary.

Don Diego de Vargas Zapata Lujan Ponze de Leon. [Rubric.]

Before me:

Alphonsso Rael de Aguilar, [Rubric.]
Civil and Military Secretary.

94 Most Excellent Sir.

Sir: Captain Juan Paez Hurtado, chief commissioner appointed by me to bring the families which by order of your excellency he procured and obtained in the city of Zacatecas, having arrived at this city of Santa Fe and having entered the plaza of the same to the number of forty-four families, which I received and inspected personally, I going to the said plaza for the purpose, and also to lodge them in the houses which were vacated by the sixty Mexican families which your excellency also sent for the settlement of this kingdom, and having succeeded in all that which I might and could desire for the royal service of His Majesty in the villa nueva, de Santa Cruz de los Vecinos Mexicanos del Rey Nuestro Senor Don Carlos Segundo in a pueblo which the rebels of the Thanos tribe had newly founded on lands which had belonged to Spaniards, and by the means which I devised for the accomplishment of this difficult enterprise I succeeded, as will be shown by the orders and proceedings had, of which I forward a certified copy to your excellency, and this, upon examination and consideration, will prove to your excellency that I have been successful, and that I have secured at a short distance another larger town of the said tribe which is vacant and free, and I have secured it for the month of October, when, God willing, I will found and settle another town with these said families which we have received and lodged to-day in this city of Santa Fe, and I will see that both shall plant crops in order that they may be relieved from receiving rations as at present and living on the generosity and magnificence of your excellency, and it is very true that the transportation of maize to this city has caused me much trouble because of the distance of the kingdom of New Biscay and of there being no resources any nearer.

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I am anxious and troubled because the courier whom I despatched on the fourteenth of January of the present year to your excellency has not returned, and this also induces me to send this despatch, in order that I may ascertain the reason of his delay or know whether he has been robbed or murdered; and I beg that your excellency will send me duplicates of the orders and despatches which your excellency may have been pleased to forward to me by the said courier in order that I may on my part duly execute the same; and I also hope that your excellency has received the reply of His Majesty the King our master, whom may God preserve, in order that with the same your excellency may decide upon the reply to my letters of consultation forwarded by your excellency to the
95 supreme and royal council of the Indies, as in this expectation I have delayed the said settlers in order that through its means they may be assured of their establishment; and two missions have also been established, Nambe and the said villa nueva, the doctrinal father serving the united pueblo of the said Thanos.

While I was absent from this city there arrived a band of Apaches from the east, who are called Chiyenes, and they told in the town at which they arrived, which is of the Picuries tribe, how some men, white and light-haired, had destroyed a very large tribe of the Apaches Comejeros, living much further inland than their own. The Chiyenes then returned whence they came. This was told to me by the alcalde mayor and the father minister, who came to see me, and I having asked the alcalde mayor why he had not detained them, he replied that the leader of the band had said that he would return with all his people in September, and if God will permit me to live until his return I will hear what he has to say and judge of it accordingly, and I did not wish to omit to give your excellency this information, together with the above, as I desire to serve your excellency in all things; and may God preserve your excellency for many happy years. Done in Santa Fe, on the ninth day of the month of May, one thousand six hundred and ninety-five.

Most excellent sir, &c.,

DON DIEGO DE VARGAS ZAPATA LUJAN PONZE DE LEON. [Rubric.]

96 *Portion of archive 1342.*

1714. (Sello.) Un quartillo. No. 366. Sello quarto, un quartillo, anos de mil seteccientos y onze, y doze, y treze, y setecientos, y catorze. Un quartillo. (Sello.)

Dn. Ferdo. de Alencaster Norona y Silva, Duque de Linares, Marqs. de Valdefuentes, Conde de Gonca y Porto Alegre, comendador mr. del Order de Santio. en el Rno. de Portugal, Gentil homre. de la Camara de S. M. de su Consso. Virey, Govr. y Capn. Gral. de esta Na. Espa. y Presidre. de la Rl. Auga. della, &c.

Por quanto Su Magd. (que Dios ge.) se sirvio expedir la real cedula del tenor siguiente—el rey. Por quanto estando dispuesto pr. ordenanzas y leyes de Yndias y con especialidad por la octava libro terzero de la recopilacion de ellas que a las nuevas reduciones y pueblos que se formaren de Yndios, se les de sitio que tenga comodidad de aguas, tierras, montes, salidas y entradas para que hagan sus labranzas y un egido de

BLEED THROU

una legua donde pasten sus ganados sin que puedan rebolverse con los de los Españoles se me ha vnformado se falta enteramente á esta dispozizion en todas las misiones de la Nueva España pues governadores y encomendadores no sole no les dan tierras a los Yndios pa. que formen sus pueblos sino que si las tienen se las quitan con biolencia dendiendoles sus hijos como esclavos y trayendo sus mugeres á sus cassas á que les sirban empleandolas en hilar, tejer y labrar sin pagarlas su travajo con que se aniquilan los pueblos que se han fundado á costa de grandes travajos de los misioneros siendo motivo de que no puedan administrarlos ni enseñarlos la doctrina y consiquientemente formarles pueblos de los muchos que se hicieran en las nuevas combersiones si los governadores y encomendadores atendieran al cumplimto. de la expresada ley y obligacion de sus empleos y no
al de dus propios intereses, por tanto por la presente mando á mi
97 Virrey de la Nueva España audiencia y governadores de ella que
en inteligencia del desagrado que me han causado estas notizias cuiden en lo adelante del remedio de este pernizioso abuso y castigo de los transgresores de las expresadas leyes y que en conformad. y observancia de ellas pongan todo su mayor desbelo y eficazia en que se de a los referidos Yndios rezien combertidos las tierras exidos y aguas que les estan conzedidas y que por ningun motivo se puedan baler de ellos ni de los hijos ni mugeres para el servizio personal sino que sea voluntario en ellos y pagandoles el jornal que fuere estilo por combenir asi al servicio de Dios y mio, teniendo entendido que de lo contrario pasare á tomar severa resoluzion y del recivo de esta despacho y haberlo hecho notorio para su cumplimiento en las partes que combenga, y de lo que resultaze de las providenzias que aplicaren me daran quenta en la primera ocasion que se ofrezca para hallarme enterado. Fha. en Madrid a quinze de Octubre de mil setezientos y treze. Yo el Rey. Por mandado del Rey Nro. Señor, Dn. Diego de Morales Velasco, señalada con quatro rubricas. Y habiendose obedezido por mi dha. rl. cedula en quatro del corrte. Mande que para la exaccion y cumplimto. de lo dispuesto por Su Magd. se llevase al señor fiscal, que vista su respuesta con que me conformé. Por el presente mando al governr. y capn. gral. de la provinzia de la Nuova Mexico guarde, cumpla y excute prezisa y puntualmente el contenido de dha. real cedula procurando por todos medios que a los Yndios rezien combertidos se les den las tierras, exidos y aguas que por leyes reales les estan conzedidas sin permitir se balgan ninguna persona de dhos. hijos ni mugeres para el servizio personal sino que sea voluntario y pagandoles en este caso el jornal que fuese estilo celando y cuidando el cumplimiento de lo mandado por Su Magd. por convenir asi al servicio de Dios y del Rey devajo de la pena de quinientos pesos que se les sacaran irremisiblemente. Mexico veinte y dos de Octubre de mill setezientos y catroze años.

98 El Duque de Linares. [Rubrica.]

Por mdo. de su exa.:

Carlos Romero de la Vega. [Rubrica.]

Assbo. dos fas.

Ve, en obedezimto. de real cedula Mda. al Govr. de la Na. Mexco. y de cumpla y execute la rl. cedula de S. M. que prebiene la observanzia de los Yndios recien combertidos.

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99 [Translation of portion of archive 1341.]

(Seal.) One quarter. Seal fourth, one quarter, for the years one thousand seven hundred and eleven and twelve and thirteen, and seven hundred and fourteen. One quarter. (Seal.)

Don Fernando de Alencaster Norona and Silva, Duke of Linares, Marquis of Valdefuentes, Count of Gonca and Porto Alegre, Knight Commander of the Order of Santiago in the Kingdom of Portugal, Gentleman of the Bedchamber and audience of His Majesty, Viceroy Governor and Captain-General of New Spain and President of the Royal Audience thereof.

Whereas His Majesty (whom may God preserve) has been pleased to issue the royal decree in the following terms—The King. Whereas, the ordinances and laws of the Indies, and especially the eighth, book third of the Recopilation of the same, provide that locations with sufficient water, land, timber, entrances, and exits for cultivation be given to the settlements and towns (pueblos) of Yndians which may be formed, and a common of one league, where they can pasture their cattle without their being mixed with those of the Spaniards; and whereas we have been informed that these ordinances are not complied with in any of their provisions in all the missions of New Spain, the governors and agents not only refusing neglecting to give lands to the Indians in order that
100 they may form towns, pueblos, but even deprive those whom have of them by force, selling their children as slaves and taking their women to their houses as servants, employing them to spin, weave, and labor, without remunerating them for their labor, depopulating in this manner the pueblos that have been established at the cost of so much labor by the missionaries, who are prevented from administering to them and teaching them the doctrine, and consequently preventing the formation of pueblos by the many Indians recently converted, which would be the case were the governors and agents to comply with the aforesaid law and discharge the duties of their office, instead of attending to their private interests. Therefore by these presents we direct my viceroy of New Spain, the audience and governors of the same, that in view of the displeasure which this information has caused us that in future they provide a remedy for this pernicious abuse and punish the transgressors of the aforesaid laws, and that in the compliance and fulfillment of the same they use their best endeavors and zeal, in order that the lands, water, and pastures granted to them be given to the aforesaid recently converted Indians, and that in no case whatsoever are they, their children, or women to be used in service without their consent and the payment of the customary price for labor, such being agreeable to the service of God and of ourself, with the assurance that if not complied with we will proceed to use severe measures; and of the receipt of this decree and of the publication of such portions as may be necessary to be complied with and of the result of the measures adopted report will be made to us by
101 the first opportunity, in order that I may be informed. Done at Madrid on the fifteenth day of October, one thousand seven hundred and thirteen. I the King. By order of the King, our Sovereign, Don Diego de Morales Velasco, countersigned with four rubrics. And said royal decree having been obeyed by me on the *on the* fourth instant

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I directed that for the performance and fulfillment of the mandate of His Majesty it be taken to the attorney-general (fiscal), and having seen his answer, with which I am satisfied, I by these presents direct the governor and captain-general of the province of New Mexico to obey, perform, and execute, punctually and faithfully, the contents of said royal decree, and to use every means, in order that the newly converted Indians receive the lands, waters, and commons which are granted to them by the royal ordinances, without permitting any person to use their children or women for private service without their free consent, paying them in such event the customary price for their labor, being zealous and careful of the performance of the mandate of His Majesty, such being agreeable to the service of God and His Majesty, under the penalty of five hundred dollars to be irrecoverably forfeited. Mexico, October twenty-second, in the year one thousand seven hundred and fourteen.

(Signed) THE DUKE OF LINARES. [Rubric.]

By order of His Excellency:

(Signed) CARLOS ROMO DE LA VEGA. [Rubric.]

(Rubric.)

102 *Portion of Archive 1342.*

Dn. Juan Bapta. de Anza, Coronel de Cavalleria de los Rs. Extos. de Su Magd., Governador y Comte de la Prova. del Nuevo Mex'co.

Por quanto con fha. de 24 de *h*enero del ultimo año anterior *de* ha servido dirigirme el Sor. Comte. Gral. la supor. decision del tenor siguiente:

Cordillera.

Villa de Sta. Fe.
Ydem de la Cañada.
Alcada. de Taos.
Ydm. de los Queres.
Ydm. de la Alameda.
Ydm. de Alburquerque.
Ydm. de la Laguna.
Passo del Norte.
A Sta. Fe.

SEÑOR COMANDANTE GRAL.: Por las Leyes 21 y 22, Tito. 3, Lib. 6, de la Recopilacion de estos Reynos se prohive, y defiende, que en las reducciones, y pueblos de Yndios, puedan vivir, ó vivan Españoles, negros, mulatos, ó mestizos, por haverse experimentado que algunos españoles que tratan, traginan, viven, y andan entre los Yndios, son hombres inquietos, y de mal vivir, ladrones, jugadores, viciosos, y gente perdida, y que por huir los Yndios de ser agraviados, dexan los Yndios sus pueblos, y provincias, y los negros, mulatos, y mestizos a demas de tratarlos mal se sirven de ellos, les enseñan sus malas costumbres y ociosidades, y tambien algunos *h*errores, y vicios, que les pueden estragar, y perve'tir el fruto que se desea en orden á su salvacion, aumento, y quietud; por cuyas razones se previene que sean castigados con graves penas, y no consentidos en los pueblos de los Yndios; y que los virreyes, presidentes, governadores, y justicias tengan mucho cuidado de hacerlo executar asi donde por sus personas pudiesen, y en las demas partes, valiendose de ministros de toda integridad cuya prohivicion se estiende, aun quando los Españoles, mestizos, y mulatos hayan comprado tierras en los pueblos de los Yndios, y sus terminos por haver sido, su residencia en ellos, la causa principal de las opresiones, y molestias que padecian, dispensando unicamente que los mestizos, y zambaigos hijos de Yndios nacidos entre ellos, y que han de heredar sus casas, y haciendas puedan vivir en sus pueblos por ser cosa dura separarlos de sus padres; cuyas providencias encarga muy particu-

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larmte. la Ley 1ª, Tito. 4, Lib. 7, á los Virreyes, Presidentes, y
103 Governadores que las hagan guardar, y cumplir.

El vando expedido por el Govor. del Nuevo Mexico D. Juan Bapta. de Anza de que hace relazn. el R. P. Fr. Juan Bermejo, parece ser conforme á la disposicion de las citadas leyes, y estando encargado de su observancia y cumplimiento, ha podido, y devido executarlo, mayormente quando segun expone el mismo padre ha procedido á ello en virtud de quexas de los Yndios, y por haver dado justos motivos para ser separados de sus pueblos algunos Españoles, mulatos, ó mestizos qe. residian en ellos en calidad de sirvientes de los padres ministros.

No admite duda, y antes bien es hecho constante y notorio, que las referidas leyes no han tenido, ni estan en observancia en la basta extension de las provincias que abraza este nuevo govierno, en que apenas se encuentra mision, ó pueblo de Yndios, donde no vivan avecindados algunos Españoles, mestizos, mulatos, y demas castas, que llaman de razon; y buscando el origen de esta permision, ó tolerancia, tengo presente haver visto una executoria expedida por la real audiencia de Guadalaxara en contraditorio juicio, declarando que la prohivision contenida en ellas, no se estiende á los pueblos de Yndios situados en las fronteras, y hostilizados por los enemigos, en qe. lexos de ser perjudicial á los naturales el establecimto. y residencia de los Españoles, y gente de razon, les produce entre otros beneficios, el de la defensa que no podrian hacer por si solos, y el de que á su imitazn. y exemplo aprehendan á cultivar la tierra, y á aprovecharse de sus frutos y crias de que carecerian muchos, si la imitacion, y buen exemplo no les estimulase á tenerlas.

En la ynstrucion expedida en el Real de los Alamos á 23 de junio de 1769, por el Exmo. Señor D. Joseph de Galvez, Visitador Gral. que á la sason era de este revno, despues de prevenir las reglas con que devian repartirse á los Yndios las tierras de sus pueblos, y hacerse las cuentas, ó matriculas de tributarios, dispuso en el Arto. 11, que las sobrantes, y realengas que quedasen fuera del termino de quatro leguas concedido á
cada uno se repartiesen, y mercenasen a los legitimos Españo-
104 les que huviese establecidos, ó que quisiesen avecindarse en los mismos pueblos; por dirigirse las soberanas, y piadosas intenciones de S. M. a que los Españoles, é Yndios vivan hermanados en sociedad, trato y comercio, para que reciprocamente se auxilien, y amen, como deven, desviando de los Yndios por este justo, y honroso medio las malas alianzas, y comunicaciones con otras castas, que tanto les perjudican. Y en el Arto. 13, dispuso igualmente que por hallarse establecidos en algunos pueblos de naturales otros vecinos de diferentes castas llamados comunmente de razon, concedia facultad á los comisarios repartidores, para que sin perjuicio de los naturales pudiesen señalarles iguales suertes que á estos, siempre que los curas, ministros, ó governadores Yndios les informasen, que los tales vecinos de razon no eran perjudiciales en los pueblos donde estuviesen establecidos, como regularmente sucede; y en el caso de no ser conveniente dexarlos en ellos, mando les hiciesen saber, que dentro de un mes mudasen su residencia á las villas ó pueblos de españoles mas immediatos, donde se les daria establecimiento, entregandoles el correspondiente mandamiento, para que asi lo executasen, y se presentasen á los juezes res. de forma que asi por

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la citada executoria, como por los referidos capitulos de la ynstrucion del Exmo. Señor D. Joseph de Galvez, parece haberse explicado, ó moderado la disposicion general de las expresadas Leyes 21 y 22, Tito. 3, Lib. 6, contrayendo unicamente su prohivicion á los Españoles, mestizos, mulatos, y zambaigos ociosos, vagamundos, y no casados que viven en los pueblos de Yndios, y les hacen daños, agravios, y molestias intolerables, los quales deven ser *h*echados de ellos, y obligados a que trabajen en sus oficios, los que los tuvieren, ó que aprehendan alguno, ó se pongan á servir para que no sean gravosos á la Républica, como lo previenen las Leyes 1ª. y 2ª, Tito. 4º, Lib. 7, de la Recopilacion.

Y siendo estas las ultimas providencias que rigen en la materia, y que por no hallarse recopiladas, y no han podido tenerlas presentes el Goververnor. del Nuevo Mexico: me parece, que á fin de que instruido de ellas las haga cumplir, guardar y ejecutar, podra V. S. si fuer servido acordar, y mandar se le pase orden para que no impida, que se
105 establezcan, avecinden, y vivan en los pueblos de Yndios los legitimos Españoles casados que tuviesen bienes raizes, ú oficio de que mantenerse en ellos, sin causar molestias, ni ser gravosos á los naturales, y que lo mismo execute por lo respectivo á los mulatos, mestizos, zambiagos y demas castas que llaman de razon, siempre que por informes de los R. R. P. P. ministros de los governadores de los mismos pueblos, y de los justicias de sus respectivos partidos, le constare no ser perjudiciales, ni gravosos á los naturales; expeliendo, y haciendo salir de entre ellos á los solteros ociosos, vagamundos, y gente de mal vivir, á quienes obligara á que pasen á residir en los pueblos, y villa de Españoles, y á que en ellos exersan sus oficios, si los tuviesen, ó en su defecto los aprehendan, se pongan á servir, ó se dediquen á la agricultura, persiguiendo, y castigando con todo rigor á los que se mantuvieren en su vida licenciosa, y vagamunda para evitar el mal exemplo, y demas perjuicios que resultan á la Republica, ó resolvera V. S. sinembargo sobre todo lo que fuere de su agrado. Arispe, 23 de Enero de 1783.

GALINDO NAVARRO.

Arrispe, 24 de Enero de 1783. Como parece al Ascior, remitiendose copia de su dictamen, y de este decreto al Govr. Dn. Juan Bapta. de Anza, y dandose aviso de la providencia al P. Custodio Fr. Juan Bermejo.

DE CROIX.

Arispe, 24 de Henero de 1783, son copias de sus originales de que certifico.

CHRISTOBAL CORVALAN.

Y á efecto de poner en practica lo mandado observar en el presedente supor. decreto mando que haciendose publico y notorio este vando en todas las jurisdicciones de esta prova. y pueblos de Yndios asi sus correspondientes governadores, y alcaldes mayores procederan con la precisa brevedad a informarme de las circunstancias de conducta, vienes-raizes, oficios y estado con que subsisten las familias ó yndividuos que tengan recidencia en los enunciados pueblos de Yndios: Lo que ygualmte. ruego y encargo á sus respectivos P. P. ministros al qual intento les han manifiesto este los expreados alcalde mayores, para en consideracion de

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los ynformes que deven proceder determinaran lo que convenga teniendose entendido que se deven exceptuar de lo prevenido, los pueblos
106 de Taos y Abiquiu en cuyos vezindarios por lo tanto, y como siempre no se hara novedad, mas por lo perteneciente á los que en ellos haia de vida licenciosa, que causen escandolos, malos tratamientos ó gravamenes á los Yndios, de luego á luego providenciaran los precitados justicias maiores á poner en execucion lo que sobre ellos se manda; y fha. la incinuada publicacion para que llegue a noticia de todos los abitares de esta prova. puesta razon de ella por el untimo justicia mayor lo debolbera a mi poder para archivarlo donde corresponde. Asi lo providencie, mande, y firme en esta villa de Sta. Fe en treze dias del mes de Marzo de mil setecientos ochenta y quatro años ante los ynfraescriptos testigos de mi assa. a falta de escrivano publico ni rl. por no baverlo en todo este govierno, de que doy fe.

JUAN BAPTA. DE ANZA. [Rúbrica.]

Assa.: VIZTA. FRANCOSO. [Rúbrica.]
Asa.: FRANCO. PEREZ SERRANO. [Rúbrica.]

Villa de Sta. Fee y Marzo 18 de 84 años.
Se publico el antecedente Bando por mi, Dn. Antto. Jose Ortiz, con todas las solemnidades acostumbradas y para que conste lo firme en dha. villa dho. dia, mes y año.

ANTTO. JOSE ORTIZ. [Rúbrica.]

Villa de Sta. Cruz de la Cañada y Marzo 25 de 1784.
En cumplimto. de lo mandado en el bando que antesede yo, Dn. Jose Campo Redondo, alcde. mor. y captn. á grra. de dha. villa, lo publique en ella, y en los demas partidos y pueblos de mi cargo; y por qe. conste lo firmo y sigue segun el orden de su cordillera; de qe. doy fee.

JOSE CAMPO REDONDO. [Rúbrica.]

San Gerenimo de Taos, y Abril 6 de 1784.
Se publico este bando por mi, Dn. Christobal Vegil, alcalde mayor y capn. a guerra de dho. pueblo, con todas las solemnidades acostumbradas, y para que conste lo firme en dho. pueblo dho. dia, mes y año.

CHRISTOBAL VEGIL. [Rúbrica.]

107 En este pueblo de Sto. Domingo de lo Queras en veinte y quatro dias del mes de Abril de 1784 años, en obedecimiento de lo mandado, en el bando que antecede, yo, Dn. Anto. de Armenta, alcalde mayr. y capitan aggra. de dhos. Pueblos, publique en este y en los demas que pertenecen a mi cargo, con todas las formalidades acostumbradas y para que conste lo firme en dicho pueblo dho. dia, mes y año; de que doi fee.

ANTONIO DE ARMENTA. [Rúbrica.]

En este pueblo de San Carlos de la Lameda, en siete dias del mes de Mayo de 1784 años, en obedecimiento de lo mandado en el bando que antesede, yo, el alcalde mayor y cappn. a guerra, Dn. Nereo Antto. Montoya, hice publicar el dho. con todas las formalidades acostumbradas en todos los partidos de mi cargo y para que conste lo firme en dho. dia, mes y año; de que doi fee.

NEREO ANTTO. MONTOYA. [Rúbrica.]

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Villa de Sn. Phelipe de Alburquerque y Maio quinse de mil setestos. ochenta y quatro años, en obedesimiento de lo mandado en el bando que antesede, yo, el alce. mayor y capn. á Gueca. Dn. Manuel de Arteaga, hise publicarlo en esta y en los demas partidos de cargo con todas las solenidades acostumbradas y para su constancia lo firme.

MAN. DE ARTEAGA. [Rúbrica.]

En este pueblo de Sor. Sn. Jose de la Laguna en 9 dias del mes de Junio, se publico el bando qe. antesede con todas las formalidades acostumbradas y para qe. coste su obedecimito lo firme en este año de 1784; de qe. doi fe.

FRANCO. LOBERA, [Rúbrica.]
Alcde. Maor.

Pueblo de Nuestra Sra. de Guadalupe del Paso del Rio del Norte, y Agosto 22 de 1784.

Cordillera.
Sn. Lorenzo del Rl.
Senecu.
108 Ysleta.
Socorro.

Este dia se publico en dho. pueblo el bando antecedente con las formalidades acostumbradas, y mando á los justicias de los pueblos de esta jurisdiccion egecuten lo mismo poniendo a continuacion la razon de haverlo hecho, asi mismo les ordeno a dhos. justicias, y a los goves. de los pueblos de Yndios qe. inmediatamente prozedan a informarme si hay alguno o algunos en los espresados pueblos qe. no viva con las circunstancias qe. previene el antecedente bando para separarlo de el o de ellos manifestando á los reverendos padres misioneros el contenido de este bando, y disposicion del Sor. Govor. de esta provincia a fin de qe. contribuyan por su parte a lo dispuesto por el Sor. Comte. Gral. y para su constancia lo, puse por diligencia qe. firme con testigos de asistencia a falta de escrivano publico ni rl. que no le hay en el termino que dispone el dro. de qe. certifico.

EUGENIO FERNANDEZ. [Rúbrica.]

De assa.: MIGUEL MORALES. [Rúbrica.]

De assa.: JUAN MATEO DE MIRANDA. [Rubrica.]

Pueblo de Sn. Lorenzo el Real y Septe. 8 de 1784, en dho. dia se publico el vando qe. anttecede con las formalidades y solemnidad acostumbrada, y por qe. constte lo firme con los testigos de mi assistencia.

DIEGO CANDELARI. [Rubrica.]

De assa.: JUAN MATEO CANDELARI. [Rubrica.]
De assa.: JOSE MARIA DE VALASCO. [Rubrica.]

Pueblo de Sn. Anto. de Senecu, Septiembre 12 de 1784, en dho. dia se publico el vando que antecede con las formalidades, y solemnidad acostumbrada y por qe. conste lo firme con los testigos de mi asistencia.

MANUEL BERNARDINO BORREGO. [Rubrica.]

Testigo: ANDRES DE ESPINOSA. [Rubrica.]
Testigo: DOMINGO ESPINOZA. [Rubrica.]

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Pueblo de Sn. Antonio de Corpus Christi, de la Isleta y Setiembre 13 de 1784 as., en dho. dia se publico el vando que antese-
109 de con las formalidades y solenidad acostumbrada y porque coste lo firme con los testigos de mi asistencia.

JOSE MARIA DURAN. [Rubrica.]

De assa.: JPH. ALDERETE. [Rubrica.]
Testigo: LEONARDO DURAN. [Rubrica.]

Pueblo de Nra. de la Purissima Consepcion del Socorro y Sepre. 21 de 1784, en este dia se publico en dho. pueblo el bando antecedente con las formalidades acostumbradas y para qe. conste lo firme con los testigos de assa.

VICENTE LOPEZ. [Rubrica.]

De assa.: JUAN ANTONIO BARELA. [Rubrica.]
De assa.: JULIAN DE ARCHULETA. [Rubrica.]

110 [Translation of portion of archive 1342.]

Don Juan Bautista de Anza, colonel of cavalry of the Royal Armies of His Majesty, governor and commander of the Province of New Mexico.

Whereas, under date of Jan. 24, of the year last past, the commandant general has been pleased to direct to me the superior decision of the following tenor:

List.

Town of Santa Fe.
" " La Canada.
Jurisdiction of the alcalde of Taos.
The same of the Queres.
" " " Alameda.
" " " Alburquerque.
" " " Laguna.
Paso del Norte.
To Santa Fe.

SIR COMMANDING GENERAL: By the 21 and 22 laws, title 3d, book 6, of the recopilation of these kingdoms, Spaniards, negroes, mul/at'oes, and mustees are prohibited and forbidden to reside in the Indian reserves and towns (pueblos), as several of the Spaniards who trade, travel through, live and have intercourse with the Indians are known to be men of turbulent conduct, bad habits, thieves, gamblers, vicious, and vagrants, and the Indians to escape injury from them are compelled to abandon their towns (pueblos) and provinces, and the negroes, mulattoes, and mustees, besides treating them badly, make servants of them, learn them bad habits and idleness, as well as many errors and vices which are calculated to make them vicious and to thwart the efforts made for their salvation, increase, and prosperity, which evils are ordered to be punished with severe penalties and forbidden to enter the Indian towns (pueblos), and that the viceroys, presidents, governors, and authorities shall use every effort to carry the same into execution as far as lies in their individual power, as well as their subordinates, availing themselves of ministers of known integrity, which prohibition extends to those Spaniards, mu'tees, and mulattoes who have purchased lands in the Indian towns (pueblos) or within their limits, their
111 residence therein being the principal cause of the opp'essions and disturbances suffered by them. The exception to this rule, only, are those mustees and children of negro's with Indian women born in the pueblos (towns), and who are to inherit their houses, flocks; these are

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allowed to reside in their towns (pueblos), as it would be cruel to separate them from their parents, the performance and fulfillment of which provisions are especially enjoined upon the viceroys, presidents, and governors by law 1st, title 4, book 7.

The order issued by Don Juan Baptista de Anza, governor of New Mexico, to which reference is made by the Rev. Father Friar Juan Bermejo, appears to be in conformity with the provisions of the aforesaid laws, and being charged with their performance and compliance he was authorized and it became his duty to execute them, more particularly, as the said father states he acted upon complaints of the Indians and just causes proven to him, why certain Spaniards, mulattoes, or mustees, who resided in the towns (pueblos) in the capacity of servants to the priests, should be removed therefrom.

There is no doubt, and indeed it is well known, notorious, and public, that the aforementioned laws have not been nor are complied in the vast provinces embraced within this new government, in which hardly a mission station or Indian town (pueblo) is to be found where several Spaniards, mustees, mulattoes, and other races do not reside, and in looking for the origen of this permission I remember having seen an order issued by the royal audience of Guadalajara declaring expressly to the contrary, stating that the prohibition therein contained did not apply to the Indian towns (pueblos) situated on the frontiers and liable to attacks from the Indians, in which the residence of Spaniards and other races, instead of being in injury to them, it produces among other benefits the advantage of defence, which they would not have if left alone, and also that by their example and advice they would learn how to cultivate the soil and
derive greater benefits from their crops and stock, which many
112 would not have were they not stimulated by imitation and the
good example set to them.

In the instructions issued at the Real de los Alamos on the 23d June, 1769, by His Excellency Don Jose de Galvez, then visitor-general of this kingdom, after stating the rules to be observed in the distribution of lands to the Indians for the formation of towns and the manner of making out the accounts or certificates for , he directed, in article 11th, that the unoccupied land remaining beyond the limits of four leagues granted to each town (pueblo) be distributed among and granted to legitimate Spaniards who may have established themselves or who wished to join said town (pueblos), the merciful and sovereign intentions of His Majesty being that the Spaniards and Indians should live together as brothers in society, trade, and commerce; that they aid each other reciprocally, and love each other as they should, preventing the Indians by this just and honorable means from contracting pernicious alliances and communication with other races which is so injurious to them. And in article 13 he declared also other races, being established in certain Indian towns (pueblos) gave authority to the distributing commissaries to give them an equal amount of land with the Indians, providing the curates, ministers, or Indian governors stated that the residence of said other races was injurious to the town (pueblo) where they were situated, as generally is the case; and in case it was not convenient to allow them to reside therein, he directed they should be notified to move their residence

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to the nearest towns or settlements of Spaniards within one month, where they would be located, delivering to them the proper warrant, ordering them to comply therewith, and present themselves to the royal justices. Therefore, according to the foregoing decree, as well as by the aforementioned chapters of the instructions of H. C. Don Jose de Galvez, the general order contained in the 21st & 22d law, title 3d, book 6, appears to be explained or modified, extending the prohibition to those Spaniards, mustees, mulattoes, and children of Indians and negroes who are idle,
vagrants, and single who reside in the Indian towns (pueblos),
113 and cause trouble, damage, and injury, who should be ejected from the towns and compelled to work at their trades, those who have any, or to learn one, or to hire themselves out, so as not to be a burden on the Republic, as provided in the 1st and 2d laws, title 4th, book 7th, of the Recopilation.

These being the last orders governing the case, and not having been compiled, the governor of New Mexico has been unable to have them before him, it appears to me that upon his being informed thereof that he cause them to be performed, fulfilled, and executed, and your excellency, if you see proper, can direct and order to be issued to him not to prevent the residence, establishment, and participation of bona fide married Spaniards who have any real estate or trade with which to support themselves in the Indian towns (pueblos) without causing disturbances or being a burden to the natives, and that the same rule apply to mulattoes, mustees, children of blacks and Indians, and other mixed races upon the report of the rev. missionaries, of the governors of the towns, and the justices of the respective jurisdictions that they are not injurious or burthensome to the natives, expelling and causing those single persons who are idle, vagabonds, and lead a vicious life, to leave the towns, and compel them to live in the towns and settlements of Spaniards and devote themselves to their trades, if they have any, or learn one, or cultivate the soil, pursuing and chasting with all severity those who lead a vicious and corrupt life, avoiding by this means the evil example they would set and other injuries to the Republic; or your excellency may, however, take such steps as you may deem proper.

Arispe, January 23d, 1783.

(Signed) GALINDO NAVARRO.

Arispe, January 24, 1783. I approve the report of the councellor, and order a copy of his report and of this decree to be forwarded to Governor Don Juan Bautista de Anza, and information be given to the Rev. Father Friar Juan Bermejo of the action taken in the premises.

(Signed) DE CROIX.

I certify the foregoing to be a copy of the originals.

Arispe, January 24, 1783.

(Signed) CHRITOVAL CORVALOU. [Rubric.]

114 And for the purpose of putting into execution what is ordered to be observed in the foregoing superior decree, I command that when this order is made public and notorious in all the jurisdictions of

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this province and Indian towns their corresponding governors and chief alcaldes proceed with the necessary promptness to make reports to me of the circumstances of conduct, real property, offices, and condition in which are living the families and individuals who reside in said Indian towns; which I likewise request and commend to their several ministers, to which intent the said chief alcades will make this known to them, in order to determine what may be proper'y in consideration of these reports, which must be made first, it being understood that the towns of Taos and Abiquiu, with whose residents therefore and as heretofore no change shall be made, but with respect to those therein who lead a licentious life, who cause scandals, bad treatment, or burdens to the Indians, the aforesaid chief justice shall take steps at once to put into execution what is ordered with regard to them, and when the said publication has been made so as to come to the notice of all the inhabitants of this province and note thereof made *made* by the last chief justice, he will return it to my power to place it in the corresponding archive. Thus I provided, ordered, and signed in this town of Santa Fe on the thirteenth day of the month of March, seventeen hundred and eighty-four, before the undersigned witnesses of my attendance, for lack of a public or royal notary, there being none in all this jurisdiction, to which I certify.

JUAN BAUTISTA DE ANZA. [Rubric.]

Attending witness: VICENTE TRANCOSO.
Attending witness: FRANCISCO PERES SERRANO.

Town of Santa Fe, and March 18 of the year 1784:

The foregoing decree was published by me, Don Antonio Jose Ortiz, with all the customary ceremonies; and in witness whereof I signed
115 it at said town on said day and in said month and year.

(Signed) ANTONIO JOSE ORTIZ. [Scroll.]

Town of Santa Cruz de la Canada, and March 25, 1784:

In compliance with what is commanded in the foregoing decree, I, Don Jose Campo Redondo, chief alcalde and war captain of said town, published it therein and in the other districts and towns under my charge; and in witness thereof I signed it, and it is forwarded according to the order in the list; to which I certify.

(Signed) JOSE CAMPO REDONDO. [Scroll.]

San Geronimo de Taos, and April 6, 1784:

This decree was published by me, Don Cristoval Vegil, chief alcalde and war captain of said pueblo, with all the customary ceremonies; and in witness thereof I signed it at said town on said day and in said month and year.

(Signed) CRISTOBAL VEGIL. [Scroll.]

At this town of Santo Domingo of the Queres, on the twenty-fourth day of the month of April, of the year 1784, in obedience to what is commanded in the foregoing decree, I, Don Antonio de Armenta, chief alcalde and war captain of said towns, published (it) therein and in the

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others that are under my charge, with all the customary formalities; and in witness thereof I signed it in said town on said day and in said month and year; to which I certify.

(Signed) ANTONIO DE ARMENTA. [Scroll.]

116 At this town of San Carlos de la Alameda, on the seventh day of the month of May of the year 1784, in obedience to what is commanded in the foregoing decree, I, Don Nerio Antonio Montoya, caused the aforesaid to be published with all the customary formalities in all the districts under my charge; and in witness thereof I signed it on said day, month, and year, to which I certify.

(Signed) NERIO ANTONIO MONTOYA. [Scroll.]

Town of San Felipe de Albuquerque, and May fifteenth of the year one thousand seven hundred and eighty-four. In obedience to what is commanded in the foregoing decree, I, the chief alcalde and war captain, Don Manuel de Arteaga, caused it to be published therein and in the other districts under (my) charge with all the customary ceremonies; and in witness thereof I signed it.

(Signed) MANUEL DE ARTEAGA.

At this town of San Jose de la Laguna, on the fourth day of the month of June, the foregoing decree was published with all the customary formalities; and as evidence obedience thereto I signed it in this year 1784, to which I certify.

(Signed) FRANCISCO LOBERA, [Scroll.]
Chief Alcalde.

Town of Our Lady of Guadalupe of El Paso del Rio del Norte, and August 22, 1784.

List.
San Lorenzo del Real.
Seneen.
Ysleta.
Socorro.

This day the foregoing decree was published in said town, with the customary formalities, and I command the justices of the towns of this jurisdiction to execute the same, placing at the end of this, my order, the note of having done so, and also I

117 command the said justices and the governors of the Indian towns to proceed immediately to report to me as to whether there is any person or persons in the said towns who do not live under the circumstances prescribed in the foregoing decree, in order to remove him or them therefrom, making known to the reverend Miss'onary fathers the contents of this decree and the order of the governor of this province, to the end that on their part they may lend their aid to the commands of the commandant general; and in witness thereof I executed these proceedings, which I signed with attending witnesses for lack of a public or royal notary, of which there is none within the distance provided by law, to which I certify.

(Signed) EUGENIO FERNANDEZ. [Scroll.]

Attending: (Signed) MIGUEL MORALES. [Scroll.]
Attending: (Signed) JUAN MATEO DE MIRANDA. [Scroll.]

Town of San Lorenzo, El Real, and September 8, 1784. On said day the foregoing decree was published with the customary formalities and

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ceremonies, and in witness thereof I signed it with my attending witnesses.

(Signed) DIEGO CANDELARI. [Scroll.]

Attending: (Signed) JUAN MATEO CANDELARI. [Scroll.]
Attending: (Signed) JOSE MARIA DE VELASCO.

Town of San Antonio de Senecu, September 12, 1784. On said day the foregoing decree was published with the customary formalities and ceremonies, and in witness thereof I signed it with my attending witnesses.

(Signed) MANUEL BERNARDINO BORREGO. [Scroll.]

Witness: ANDRES DE ESPINOSA. [Scroll.]
Witness: DOMINGO ESPINOSA. [Scroll.]

118 Town of San Antonio de Corpus Christi de la Ysleta and September 13 of the year 1784. On said day the foregoing decree was published with the customary formalities and ceremony, and in witness thereof I signed it with my attending witnesses.

(Signed) JOSE MARIA DURAN. [Signed.]

Attending: (Signed) JOSEPH ALDERETE. [Scroll.]
Witness: LEONARDO DURAN. [Signed.]

Town of Our Lady of the Most Pure Conception of El Socorro and September 17, 1784. On this day in said town the foregoing decree was published with the customary formalities, and in witness thereof I signed it with the attending witnesses.

(Signed) VICENTE LOPEZ. [Scroll.]

Attending: (Signed) JULIAN DE ARCHULETA. [Scroll.]
Attending: (Signed) JUAN ANTONIO BARELA. [Scroll.]

119 *Portion of Archive 1342.*

El P. custodio de estas Visiones Fr. Juan Bermejo me hizo presente que V. S. havia mandado publicar un bando para que ningun vecino español, mulato y de otras castas, que llaman de razon, se establesca, ni subsista en pueblos de Yndios bajo la multa de cincuenta ps. en oro de minas.

Esta Providencia aunque es conforme a las leyes 21 y 22, tito. 3°, lib. 6° de la Recopilacion de estos Reynos, admite las modificaciones que me ha expuesto el asesor de esta comandancia gral. en el dictamen de que incluyo copia certificada, á las que devera V. S. arreglarse en lo sucesivo, respecto a haverme conformado con el referido dictamen: lo que prevengo a V. S. para su puntual y exacto cumplimiento.

Dios guarde a V. S. muchos años. Arispe 24 de Enero de 1783.

EL CAVRO. DE CROIX. [Rúbrica.]

Sor. Dn. JUAN BAPTA. DE ANSA.

120 *Translation of letter forming a part of archive No. 1342, in surv. gen.'s office.*

The father custodian of those missions, Friar Juan Bermejo, has represented to me that your excellency had ordered published a decree to

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the effect that no Spanish citizen, mulatto, or person of other mixed races that are called civilized races [de razon] should settle or remain in Indian towns under the penalty of a fine of fifty dollars in uncoined gold.

This provision, although it is in conformity with laws 21 and 22, title third, book sixth of the Recopilacion of these kin'doms, is subject to the modifications that the consulting attorney of this commandant-general's office has set forth for me in the opinion, of which I enclosed a certified copy; by which modifications your excellency should be governed in the future, in view of my having approved the said opinion, of which I advise your excellency for your prompt and exact compliance.

God preserve your excellency many years. Arispe, Jan. 24, 1783.

(Signed) THE CHEVALIER DE CROIX. [Seroll.]

To Señor Don JUAN BAUTISTA DE ANZA.

121 *Testimony taken before the surveyor-general, officered by the defendant.*

POJUAQUE.

Jose de Jesus Montoya, governor; Juan Bautista Sanchez, war chief, and Matias, preserver of the peace of the pueblo of Pojuaque, being duly sworn by the surveyor-general, at his office, at Santa Fe, in the presence of General A. G. Mayers, Indian agent for the pueblos, they answered the interrogatories propounded to them in the following manner, to wit:

Question. Did the pueblo of Pojoaque receive a grant for the lands they occupy from the King of Spain?

Answer. They did receive a grant from the King of Spain.

Question. Where is the grant now?

Answer. We do not know where it is now.

Question. Do you when and how the pueblo was deprived of its possession?

Answer. About forty years since a land suit occurred between the pueblo and a Mexican, and the title deed of the pueblo was presented to the alcalde of Chimayo, Bautista Vigil, as evidence in the case, since which time the grant has not been heard of.

Question. Have you any tradition of the length of time the pueblo has been in existence?

Answer. The bell of the church bears date of 1710. The bell was cast for the church.

Question. Has the pueblo been occupied continuously from that date up to the present time by your people?

Answer. It has been so occupied.

Question. Do you know if the grant of the pueblo called for one league from the church towards the four cardinal points of the compass, and if you claim the same amount of land granted to the other pueblos?

Answer. We claim one league from the corners of the church towards the four cardinal points, and are entitled to the same amount of land granted to the other pueblos.

Question. Do you raise wheat, corn, fruit, and stock, and do you subsist entirely by agricultural pursuits?

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Answer. We raise wheat and corn, and depend on what we raise for our subsistence. We do not raise enough to support us comfortably, but live on what we raise, although we suffer sometimes.

122 Governor, JOSE DE JESUS MONTOYA (his x mark).
War Chief, JUAN BAUTISTA SANCHEZ. [Rubric.]
Preserver of the Peace, MATIAS (his x mark).

Sworn and subscribed before me this 28th day of June, 1856.

WM. PELHAM,
Surveyor-General of New Mexico.

123 *Testimony taken before surveyor-general, offered by defendant.*

NAMBE.

Juan Lozario Padilla, governor; Antonio Vigil, lieutenant-governor; Jose Maria Ruibal, chief, of the pueblo of Nambe, being duly sworn by the sur'eyor-general, at Santa Fe, in the presence of General A. G. Mayers, Indian agent for the pueblos, they answered the interrogatories propounded to them in the following manner, viz:

Question. Did the pueblo of Nambe receive a grant for the lands they occupy from the King of Spain?

Answer. From our ancestors we have been informed that the grant was in the possession of the pueblo.

Question. Do you when and how the pueblo was deprived of its possession?

Answer. Many years since a dispute arose between the Indians of the pueblo and several Mexican citizens who wished to trespass upon their land. The case was taken before the acting governor of the territory, to whom the governor of the pueblo delivered the grant, and although they have claimed it several times, the acting governor refused to deliver it up, since which time it has not been seen or heard of.

Question. Have you any tradition of how long the pueblo has been in existence, and was the oldest man in it born there?

Answer. From tradition we know the pueblo was settled at the same time the others were; the oldest man in the pueblo was born there.

Question. Do you know if the grant to your pueblo calls for one league towards the four points of the compass?

Answer. We claim one league in each direction from the four corners of the church.

JUAN ROSARIO, *Governor.*
ANTONIO (his x mark) VIGIL, *Lieut. Gov.*
JOSE MARIA (his x) RUIBAL, *Chief.*

Witness:
A. G. MAYERS,
Agent for the Pueblo Indians of N. M.

Sworn and subscribed before me this 29th day of September, 1856.

WM. PELHAM,
Surveyor-General.

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124 And afterwards, to wit, on the 19th day of October, 1895, the same being the 12th day of said term, the following among other proceedings were had, to wit:

U. S. Court of Private Land Claims.

MARIA DE LA PAZ DE CONWAY ET AL.
vs.
THE UNITED STATES OF AMERICA, THE Pueblo of Pojoaque, and the Pueblo of Nambe. } No. 112.

October term, A. D. 1895, Santa Fe district.

Upon consent of all parties to this cause, made in open court this eleventh day of October, A. D. 1895, it is ordered that the pueblo of Pohuaque and the pueblo de Nambe be made parties herein, and that the petition of the claimants be deemed amended accordingly.

And further, as to certain original muniments of title produced from the custody of the claimants introduced in evidence, that the annexed abstract thereof, in English, made by Mr. Henry O. Flipper, be taken and considered as the equivalent of the originals.

125 And further, that as part of the evidence adduced in behalf of the defendant there be received and considered the deposition of Juan Lozario Padilla, Antonio Vigil, and Jose Maria Ruibal, Jose de Jesus Montoya, Juan Bautista Sanchez and Matias, taken before the surveyor-general for New Mexico in the cases of the pueblo of Pohuaque (Report No. X) and the pueblo of Nambe (Report No. R), the said witness being now dead.

JOSEPH R. REED,
Chief Justice.

126 And afterwards, to wit, at a stated term of the Court of Private Land Claims, begun and held at Santa Fe, on the seventh day of October, A. D. 1895, and on the sixteenth day of said term, the same being the twenty-fourth day of October, A. D. 1895, the following among other proceedings were had, to wit:

127 *Decree.*

In the Court of Private Land Claims, October term, 1895.

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL.,
versus
THE UNITED STATES.

This cause having been duly tried at a former day of the present term, and having been submitted to, and taken under advisement by, the court, the court being now sufficiently advised in the premises:

It is on this 24th day of October, 1895, found, declared, adjudged, and decreed by the court that, on the 2nd day of January, 1731, Juan Domingo

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de Bustamente, governor and captain-general of the province of New Mexico, granted to Bernardino de Sena, Tomas de Sena, and Luis Lopez a certain tract of land situate in said province, and now in the county of Santa Fe, Territory of New Mexico, and known as the Cuyamungue tract; and that under the commission and instructions of the said governor, Bustamente, the said granted tract was, on the 22nd day of January, 1731, duly delivered in actual possession to the said grantees above named by Domingo Vigil, lieutenant chief alcalde of the new village of Santa Cruz. That the said tract of land so granted and so delivered in possession is bounded and described as follows: On the north by the lands of Lazaro Trujillo; on the south by the lands of the pueblox of Tesuque, which reach to an arroyo that comes down from east to west to the river of Cuyamungue, and on said arroyo there are two mounds of bluestone, one on one side and the other on the opposite side thereof a little above said arroyo; on the east some hills and the road that leads to the pueblo of San Francisco de Nambe; and on the west some hills and forests on the other side of the Cuyamungue River. That the said tract of land so granted has remained in the possession of the said grantees and their heirs and successors from the date of said grant to the present time. That the petitioners in this case have shown themselves possessed of such
128 an interest as entitled them to maintain this action. That the said grant so made was a complete and perfect title at the date of the treaty of Guadalupe Hidalgo in the year 1848.

It is therefore further adjudged and decreed that the said grant so made be and the same hereby is confirmed as a complete and perfect title to the extent of the boundaries called for in the grant and act of possession as above set forth to the heirs and legal representatives of the said grantees, Bernardino de Sena, Tomas de Sena, and Luis Lopez.

And it is further ordered, adjudged, and decreed that this confirmation shall in nowise affect the rights of the pueblos of Pojoaque and Nambe (if any they have) as between them and the said confirmees, under their patents issued by the United States Government, and shall not confer any right or title to any gold, silver, or quicksilver mines and the minerals thereof in the confirmees within the boundaries of said grant, unless said confirmees shall have become otherwise entitled thereto in law or in equity, and that this confirmation is made subject to all other terms and conditions provided in the act of Congress creating this court, respecting confirmations of private land claims.

JOSEP R. REED,
Chief Justice.

SANTA FE, NEW MEXICO, *October 24th, 1895.*

129 And be it further remembered that thereafter, to wit, on the 24th day of October, A. D. 1896, the opinion of the court in said

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cause was filed in the office of the clerk, which said opinion is in the words and figures following, to wit:

130 In the U. S. Court of Private Land Claims. District of New Mexico. October term, A. D. 1895.

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL., petitioners, *against* THE UNITED STATES OF AMERICA, DEFENDANT. } No. 112.

Involving the title to the property claimed under what is known and commonly called the "Cuyamungue Grant," in Santa Fe County, Territory of New Mexico.

Opinion of the court, by Mr. Justice Murray.

Delivered and filed this day of , 1895.

131 Mr. Justice MURRAY delivered the opinion of the court.

The petition in this case is filed under the provision of the 8th section of the act of Congress approved March 3rd, 1891. (22 Stats. at Large, 854, C. 539.) It appears from an examination of the expediente offered in evidence as the basis of the claim, that in the year 1731 Bernardino de Sena, Thomas de Sena, and Luis Lopez, presented a petition at Santa Fe, New Mexico, to Juan Dom. de Bustamante, governor and captain-general, asking for "the surplus land in the abandoned pueblo of Cuyamungue as royal, public, and uninhabited." The boundaries of the grant are set out in the petition. On the 2nd day of January, 1731, the governor granted the land prayed for, and in the granting decree directed the chief alcalde of the new village of Santa Cruz to notify all the adjoining landowners of the grant so made by him, and if there was no objection to the grant, the alcalde was directed to put the petitioners in royal possession. On the 22nd day of January, 1731, the alcalde, Domingo Vigil, put Bernardino de Sena, one of the petitioners, in royal possession of the land granted. In the act of possession it is stated by the alcalde that he "caused all the Indians, governors, and captains to assemble, and notified them of what his excellency ordered and commanded, by reading to them the said decree and giving them to understand that if they had any objections whatever to make to the grant of land made by his excellency, the said governor, to Bernardino de Sena, to make it to him freely, that they would be heard in justice; and being informed of said decree they jointly and severally said that they made no objection whatever, and that it did not in anywise injure them." * * * After reading the grant to other adjoining owners of land and being informed by them that they had no objections to offer, the alcalde said: "I proceeded with my attending witnesses to the pueblo of Cuyamungue, and having examined the boundaries," he put the said Bernardino de Sena in possession of the land. The grantees, their heirs and assigns have been in pos-
132 session of the land granted up to the present time, a period of 164 years. It appears from deeds and other documents filed by

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the petitioners, deraigning title from the original grantees, that as early as 1733 the place was known as the "rancho of Cuyamungue." In the year 1805 Governor Alencaster approved an order of an alcalde restraining the Indians of Tessuque from constructing an irrigating ditch to the prejudice of the parties in possession of said land. The expediente constitutes a complete and perfect title under the laws of Spain in force in New Mexico at the date of the grant, and the title and possession under it have always been recognized and respected by the Governments of Spain and Mexico. The petitioners show such an interest in the grant as entitles them under the provisions of the act of March 3rd, 1891, to ask this court to confirm the same.

The difficulty in the case grows out of the fact that the Indian pueblos of Nambe and Pojoaque instituted proceedings before the surveyor-general of New Mexico under the act of July 22, 1854, for four leagues of land each. The surveyor-general recommended that the land asked for be granted. Congress confirmed a grant to each of said pueblos for four square leagues as recommended. The grants to said pueblos have been surveyed and patents for them issued. The surveys as made cover all the land of the pueblo of Cuyamungue granted to the original grantee in this case, except about 100 acres. It is insisted by the Government's attorney for said pueblos that the land covered by their patents should be excepted out of the decree of confirmation of the grant of 1731.

The pueblos of Nambe, Pojoaque, and Cuyamungue were in existence as early as 1541, when the Spaniards first visited this country. (See Bandelier's Investigations Among the Indians of the Southwestern United States," part 1, American series 3, page 123.) They were pueblos in 1692, 3, 4, 5, and 6. (See Bancroft's History of Arizona and New Mexico, pages 206, 201, 212, 216.) The Indians of these
133 pueblos belonged to the Tehnas tribe or nation. It is not known definitely when the pueblo of Cuyamungue was abandoned, but it was most likely about the close of the 16th century.

The surveyor-general proceeded on the idea that as a matter of law all the Indian pueblos were entitled to four square leagues of land measured from the church or center of the pueblo. This seems to have been the prevailing opinion of the officials in New Mexico, and Congress, on the recommendation of the several surveyors-general, has confirmed to a large number of Indian pueblos in New Mexico that quantity of land.

I have examined all the laws of the Indies in relation to Indian pueblo lands, and have failed to find any law that can by any possibility be construed to sustain the opinions of the surveyors-general.

(Many of these laws have never before been translated into English, to my knowledge, and I therefore attach them to this opinion.)

The first law bearing directly on this question is the ordinance of May 26th, 1567. It prov'es that stock farms should not be located nearer than 1,000 varas from the settlement and houses of Indians. The law of 1573 and 1618 provided "that the sites where towns or settlem'nts are to be made shall have conven'ences of water, land, timber, entrances and exits, farms, and town commons of one league in length, where the Indians can keep their stock without its being mixed with other stock of the Spaniards."

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The cedula of June 4th, 1687, reviews all former laws on the subject and provides that the Indians shall have six hundred varas to each wind measured from the last house on each side of the town, and prohibits stock farms from being located nearer than 1,100 varas from the last house on each side of the town. This law also gives the viceroays authority to grant to the pueblos any lands in addition to what is provided which, in his judgment, the Indians may need.

The cedula of July 4th, 1695, provides that in measuring
134 the 600 varas and 1,100 varas provided for by the cedula of June 4, 1687, the beginning point should be the church or center of the town, and not from the outside houses. The reason for this change is fully set out in said cedula. This law provides for a grant to each Indian pueblo of about 839 acres. The quantity of land to which an Indian pueblo is entitled can only be determined by the grant itself. The viceroays were authorized to grant land to pueblos in any quantity they might see fit, and it might be surveyed in any shape he might direct, or they could limit the grant to the 1,100 square varas prescribed by law, but in that event a grant for that quantity must be issued. The fact that the pueblo of Cuyamungue was abandoned did not extend the boundaries of the pueblos of Nambe and Pojoaque or confer any rights on said pueblos to the land which had belonged to the pueblo of Cuyamungue. It was held by the governor and captain-general of the province of New Mexico, who had the right and power under the law to determine such questions, that the land occupied by the Indians of the pueblo of Cuyamungue when abandoned by them became royal public domain, and as such granted it to the petitioners in 1731.

The grant should be confirmed to the extent of the boundaries set out in the act of possession, unless the court is prohibited by the terms of the act of March 3rd, 1891, from giving the petitioners what they are clearly entitled to under the law and facts of this case.

The court will not construe an act of the legislative department of the Government so as to confiscate the private property of the citizens if such a construction can be avoided. The parts of said act necessary to be considered in this case are the following:

"SEC. 7. That all proceedings subsequent to the filing of said petition shall be conducted as nearly as may be according to the practice of the courts of equity of the United States, except that the answer of the attorney of the United States shall not be required to be verified
135 by his oath, and except that, as far as practicable, testimony shall be taken in court or before one of the justices thereof. The said court shall have full power and authority to hear and determine all questions arising in cases before it relative to the title to land the subject of such case, the extent, location, and boundaries thereof, and other matters connected therewith fit and proper to be heard and determined, and by a final decree to settle and determine the question of the validity of the title, and the boundaries of the grant or claim presented for adjudication, according to the law of nations, the stipulations of the treaty concluded between the United States and the Republic of Mexico at the city of Guadalupe Hidalgo, on the second day of February, in the year of our Lord 1848, or the treaty concluded between the same powers at the City

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of Mexico, on the 30th day of December, in the year of our Lord 1853, and the laws and ordinances of the Government from which it is alleged to have been derived, and all other questions properly arising between the claimants or the parties in the case and the United States, which decree shall in all cases refer to the treaty, law, or ordinance under which such claim is confirmed or rejected; and in confirming any such claim, in whole or in part, the court shall in its decree specify plainly the location, boundaries, and the area of the land the claim to which is so confirmed.

"SEC. 8. That any person or corporation claiming lands in any of the States or Territories mentioned in this act under a title derived from the Spanish or Mexican Government, that was complete and perfect at the date when the United States acquired sovereignty therein, shall have the right (but shall not be bound) to apply to said court in the manner in this act provided for other cases of confirmation of such title; and on such application said court shall proceed to hear, try, and determine the validity of the same and the right of the claimant thereto, its extent, location, and boundaries, in the same manner and with the same powers as in other cases in this act mentioned.

"If in any such case a title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such lands that shall have been disposed of by the United States (and always subject to and not to affect any conflicting private interests, rights, or claims held or claimed adversely to any such claim or title, or adversely or the holder of any such claim or title). And no further confirmation of claims or titles in this section mentioned shall have any affect other or further than as a release of all claim of title by the United States; and no private right of any person, as between himself and other claimants or persons in respect of any such lands, shall be in any manner affected thereby.

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"SEC. 13. That all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions as well as to the other provisions of this act, namely:

"First. No claim shall be allowed that shall not appear to be upon a title lawfully and regularly derived from the Government of Spain or Mexico, or from any of the States of the Republic of Mexico having lawful authority to make grants of land, and one that, if not then complete and perfect at the date of the acquisition of the territory by the United States, the claimant would have had a lawful right to make perfect had the territory not been acquired by the United States, and that the United States are bound, upon the principles of public law or by the provisions of the treaty of cession, to respect and permit to become complete and perfect if the same was not at said date already complete and perfect.

"Second. No claim shall be allowed that shall interfere with or overthrow any just and unextinguished Indian title or right to any land or place.

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136 "Fourth. No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority.

"Fifth. No proceeding, decree, or act under this act shall conclude or affect the private rights of persons as between each other, all of which rights shall be preserved and saved to the same effect as if this act had not been passed; but the proceedings, decrees, and acts herein provided for shall be conclusive of all rights as between the United States and all persons claiming any interest or right in such land.

"Sixth. No confirmation of or decree concerning any claim under this act shall in any manner operate to have effect against the United States otherwise than as a release by the United States of its right and title to the land confirmed, nor shall it operate to make the United States in any manner liable in respect of any such grants, claims, or lands, or their disposition, otherwise than as in this act provided.

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"SEC. 14. That if in any case it shall appear that the lands or any part thereof decreed to any claimant under the provisions of this act shall have been sold or granted by the United States to any other person, such title from the United States to such other person shall remain valid notwithstanding such decree, and upon proof being made to the satisfaction of said court of such sale or grant and the value of the lands so sold or granted, such court shall render judgment in favor of such claimant against the United States for the reasonable value of said lands so sold or granted, exclusive of betterments, not exceeding one dollar and twenty-five cents per acre for such lands; and such judgment, when found, shall be a charge on the Treasury of the United States. Either party deeming himself aggrieved by such judgment may appeal in the same manner as provided herein in cases of confirmation of a Spanish or Mexican grant. For the purpose of ascertaining the value and amount of such lands surveys may be ordered by the court, and proof taken before the court, or by a commissioner appointed for that purpose by the court."

It is quite clear that the confirmation of this grant would not "interfere with or overthrow any just and unextinguished Indian title or right to any land or place." It would hardly be insisted under the facts in this case that the pueblos of Nambe and Pojoaque had any just right or claim at the date of the treaty of Guadalupe Hidalgo to any part of the land covered by this grant. It is equally clear that the United States did not acquire any right or interest in the land of the citizen in the ceded territory held by a complete and perfect title at the date of said treaty.

The confirmation of this grant would not be a claim allowed "for land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority," for the reason that Congress did
137 not undertake to decide who was the rightful owner of the land confirmed to the pueblos of Nambe and Pojaoque, but on the contrary it is expressly stated in the patents issued to them that it is not to interfere with any prior right to the land which may be held by other parties. The action of Congress on the claims and the issuance of the

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patents thereunder is nothing more than a release to them of whatever interest the United States might have in the land. In this case we have shown that the United States had no interest in the land to release. A confirmation of the grant to the extent of the boundaries would not in any way affect the rights of the pueblos under their patents (if they had any) as against the petitioners; they are fully protected by subdivision 5 of section 13 of the act of March 3rd, 1891.

This view of the case is not in conflict with the doctrine laid down by the Supreme Court of the United States in the case of Tomeling vs. U. S. Freehold, etc. (93 U. S., p. 644). In that case a suit was commenced in the Territory of Colorado against Tomeling to recover 160 acres of land within the outboundaries of a larger tract of land which had been confirmed by Congress. The case was submitted on an agreed statement of facts, from which it appears that the land claimed in the plaintiff's declaration was within the exterior boundaries of what is known as the Sangre de Chista grant, which had been confirmed to Charles Beaubien. The plaintiff claimed title in fee simple by conveyance from one Martin Coats Fisher to him. Without reciting all the facts in the case, it is sufficient to say the question decided in the case is that Congress had power and authority to confirm Spanish and Mexican grants under the act of July 22, 1854, and that such action by Congress was final and binding on the courts. It is stated by the learned judge *you* delivered the opinion of the court that "the confirmation being absolute and unconditional, without limitation as to quantity, we must regard it as *a*ffectual and operative for the entire
138 tract." But the controlling point decided is that there was no jurisdiction whatever conferred on the courts by the act of July 22, 1854. The powers conferred on the commissioners and courts over claims under Spanish and Mexican grants by the act of March 3, 1851, is discussed by the court, and the difference between that act and the act of 1854 as to the power of the courts clearly defined. It is again announced as the settled doctrine of that court that an act of Congress confirming a grant passes the title of the United States as effectually as if it contained in terms a grant de novo, and a grant may be made by law as well as by patent pursuant to law.

It will be observed that the 7th section of the act creating this court gives it "full power and authority to hear and determine all questions arising in cases before it relative to the title to the land" and makes it the duty of the court, by final decree, to settle and determine the question of the validity of the title and the boundaries of the grant or claim presented for adjudication. If the petitioners in this case have a complete and perfect title to the land in question under the grant of 1731, it necessarily follows that the pueblos of Nambe and Pojoaque have no right or title to any of the land within the boundaries of such complete and perfect grant. But the decree of this court does not in any way affect the right or title (if any) that the pueblos acquired by their patents from the United States, as between them and the petitioners. All adverse claimants are made parties, not that their rights as against the petitioners are to be affected by any adjudication of the court as to the title of the land in controversy, but to the end that a final decree may be entered by

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the court which will bind all claimants of the land, the subject of the suit, so far as the United States is concerned. It is true that it is well settled, a confirmation by Congress of a grant of land passes the title of the United States in the land covered by the grant, but it is
139 equally well settled by the Supreme Court of the United States that a patent issued by the United States to land which it did not own is void. (Martin vs. Nebraska, 21 Wall., p. 660; Polk vs. Wendell, 9 Cranch, p. 99; Id., 5 Wheaton, p. 301; Patterson vs. Moore, 11 Wheat., p. 383–4; Minter vs. Crometin, 18 Howard, p. 88; Reichart vs. Phelps, 6 Wall., 165; Minn vs. Brooks, 8 Howard, 232–3; Sabairego vs. Maverick, 124 U. S., p. 282–3; Wright vs. Roseberry, 121 U. S., 520.)

In a recent case this doctrine has been applied to documents executed by Mexican governmental officials. The rule laid down by the Supreme Court of the United States is as follows: "All that can be reasonably or lawfully claimed as the effect of such documents of title is that they pass such estate and such estate only as the Government itself, in whose name and on whose behalf the official acts appear to have been done, had at that time, but not to conclude the fact that the estate conveyed was lawfully vested in the grantor at the time of the grant." (Sabariego vs. Mavarick, supra.) The court having found that the petitioners' grant was complete and perfect at the date of the treaty in 1848, the only remaining question is as to whether or not the court can pronounce a decree in accordance with the law and facts found by it, which will enable the petitioners in a suit against them in the local courts by the pueblos of Nambe and Pojoaque on their patents, to rely on the decree of this court confirming their grant to the extent of the boundaries.

In the act of Congress confirming the grants to the pueblos, it is provided: "That this confirmation shall only be construed as a relinquishment of all title and claim of the United States to any of said lands, and shall not affect any adverse valid rights should such exist." In the case of United States vs. Joseph (94 U. S., p. 619), Mr. Justice Miller, speaking for the court, said: "It is unnecessary to waste words to prove that this was a recognition of the title previously held by these people
140 and disclaimer by the Government of any right of present or future interference, except such as would be exercised in the case of a person holding a complete and perfect title in his individual right." So, in the opinion of that court, it is the duty of the Government to recognize and protect complete and perfect titles held by persons in their individual right, notwithstanding the fact that the land covered by such titles may have been confirmed by Congress to other parties and patent issued for the same. It will be observed that section 8 makes it the duty of the court to confirm complete and perfect grants, and to locate the boundaries of the same, but provides that such confirmation "shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States." We do not see how the court could confirm a grant for more than the grant was found to cover, nor do we see how the court can except out of the decree of confirmation land that is covered by such grant, without violating other parts of the section, as well as subdivision 5 of section 13, which prohibits the court in any case from pro-

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nouncing a decree that will conclude or even affect the private rights of persons as between each other, "all of which rights shall be preserved and saved to the same effect as if this act had not been passed." Section 13 provides that "all the foregoing proceedings and rights shall be conducted and decided subject to the following provisions, as well as to the other provisions of this act." So that section 8 must be construed with subdivision 5 of section 13, which, as before stated, clearly prohibits the court from pronouncing a decree which shall affect the private rights of persons as between each other.

It seems to us quite clear that to except out of a decree of confirmation in this case the land within the boundaries of the grant which is covered by the patents of the pueblos of Nambe and Pojoaque would affect materially the rights of the petitioners to the land so excluded, as between
141 them and the pueblos, and the rights of the petitioners would not be saved to the same effect as if the act had not been passed. The United States has no interest whatever in the land in controversy further than to protect the property rights of the petitioners as provided for in the Treaty of Guadalupe Hidalgo, the Constitution of the United States, and the law of nations. It is the duty of the court, in suits brought under section 8, "to hear, try, and determine the validity of the grant and the right of the claimant thereto, its extent, location, and boundaries, in the same manner and with the same powers as in other cases in this act mentioned." So the court must look to section 7 for the law by which it must be governed as well as its powers to adjudicate all questions which may arise in the case relative to the title to the land, the subject of such case, etc. And, as before stated, the court is compelled to make a final decree which shall settle and determine the validity of the title and boundaries of the grant according to the laws enumerated in said section. This it is quite impossible for the court to do unless it has power to pronounce a decree in accordance with the facts found from the evidence and applied to the law by which the court must be governed. This court held at a former term that the provisions of section 14 allowing compensation in certain cases did not apply where the land claimed in this court under a title from Spain or Mexico had been patented by the United States to another claimant under a Spanish or Mexican grant. That such action by the Government did not amount to a sale or grant by the United States within the meaning of said section. To exclude the land granted to the petitioners in this case covered by the patents of the pueblos would amount to a confiscation of the land so excluded.

A decree confirming the grant as a complete and perfect one to the extent of the boundaries called for in the grant will be entered in this case. When this is done, the manifest intention of Congress will
142 be carried out, and the rights of the pueblos (if any) will not in any way be affected. The question of the validity of their title under their patents and the validity of the petitioners' title under a decree of confirmation by this court can be determined as between the parties themselves by the local tribunals in a proper proceeding instituted for that purpose.

W. W. MURRAY, *Associate Justice.*

SANTA FE, NEW MEXICO, *October, 1895.*

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143 And be it further remembered that, to wit, on said 24th day of October, A. D. 1896, the dissenting opinion of Mr. Justice Sluss in said cause was filed in the office of the clerk, which said dissenting opinion is in the words and figures following, to wit:

144 In the Court of Private Land Claims, district of New Mexico.

MARIA DE LA PAZ VELDEZ DE CONWAY ET AL., PETITIONERS,
vs.
THE UNITED STATES, DEFENDANT.

The controverted question in this case is, Should there be excepted from the decree of confirmation that part of the land covered by the grant falling within the lines of the land patented to the Indian pueblos of Pojoaque and Nambe?

The claims of the lands of these several pueblos were confirmed by an act of Congress, entitled "An act to confirm the land claim of certain pueblos and towns in the Territory of New Mexico," approved December 22, 1858 (11 Stats. at Large, page 374).

The provisions of the act were that the several claims were confirmed as reported on favorably by the surveyor-general of New Mexico; that the claims should be surveyed as recommended for confirmation by said surveyor-general, and that a patent should issue therefor.

The claims made by each of the pueblos was for four square leagues of land, having the church as a center. The claim' so made were approved and recommended for confirmation by the surveyor-general, and four square leagues was surveyed and patented to each of the pueblos. The lands so survey'd and patented to the pueblos cover the greater part of the land claimed under their grant by the plaintiffs in this case.

The corrections of the surveyed and patented boundaries of the four square leagues of each pueblo is not questioned. The only question being whether the decree of confirmation of plaintiffs' claim should be for all the land within the boundaries described in the grant, or for only so much as remains after excepting the patented pueblo lands.

145 The plaintiffs presents their claim for confirmation under the provisions of the 8th section of the act of Congress creating this court, claiming that the title under their grant had become complete and perfect at the time of the cession of this territory to the United States, and this court is un'imously of the opinion that the grant title was complete and perfect as claimed by plaintiffs.

There are several provisions of the act of Congress creating this court which seem to render it imperative that these patented pueblo lands be excepted from the decree of confirmation.

The first is the second subdivision of section 13, which reads: "No claim shall be allowed that shall interfere with or overth'ow any just and unextinguished Indian title or right to any land or place."

This language is very comprehensive and seems to be quite free from doubt as to its meaning. If the claim presented interferes with such an Indian title, it can not be allowed. Interference does not mean destruction. It simply means a claim that comes in opposition to, or that clashes with, or covers the same ground. Unquestionably the claim of

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the plaintiffs in this case, as to that part of the land included in the patents to the pueblos, is in opposition to, and clashes with, and covers the same ground—in a word, interferes with the Indian title to the same land. There is no escape from the plain English of it. Are these Indian titles just and unextinguished, within the meaning of this provision of the act of Congress? How is that question to be determined? It is seen that the Indians presented their claim of title to the surveyor-general of the Territory in pursuance of law. That the surveyor-general investigated their claim and approved them, and recommended their confirmation to the Indians by Congress. That Congress, in pursuance of this investigation and recommendation of the surveyor-gen-

146 eral and acting upon it, confirmed these lands to the Indians according to the claims they made for them. In the Astiazaran Case (148 U. S., 80) it is established that this investigation, approval, and confirmation constitutes a proceeding in a tribunal having exclusive jurisdiction to determine the status of the land. And in the Tameling Case (93 U. S., 644) it is established that in such proceeding confirmation by Congress operates as an adjudication of the rights of the parties conclusive and binding upon all the Departments of the Government and that the courts can not review or question the correctness of the decision. Tried by the doctrine of the cases cited, it is apparent that the confirmation by Congress of these pueblo lands operates as an adjudication, so far as the United States is concerned; that the Indian title to these lands is just and unextinguished, and that the boundaries are as claimed by the Indians, and as such adjudication is conclusive upon this court, and that we can not set in review upon the question. It results therefore that we are co'pelled to hold that the claim presented by the plaintiffs does interfere with a just and unextinguished Indian title.

The second provi'on of the act of Congress to which attention is directed is the fourth subdivision of section 13, which reads: "No claim shall be allowed for any land the right to which has hitherto been lawfully acted upon and decided by Congress or under its authority."

Under this provision, if the right to the land has been acted upon and decided by Congress, we can not allow any claim to that land. The words "right to which" evidently referred to the antecedent "and land," and not to the word "claim." This court does not adjudicate the right to the claim, but does adjudicate the right to the land as against the United

States. If this right to the land has once been adjudicated against

147 the United States, there would certainly be neither object nor reason to provide a tribunal to adjudicate the same thing a second time, and no reason for permitting the time of the tribunals of the United States to be occupied in adjudicating the same thing a second time. The object of the provision was a proper one, and in harmony with the specific and repeated declaration of this act that the rights of third persons to the land should not be affected by the confirmation of any claim to it, and in harmony with the invariable practice of Congress to incorporate in its acts of confirmation the provision that the rights of third persons in the land were not affected by the confirmation. But aside from any speculation as to the policy of Congress in the matter, the fair and plain interpretation of provision under consideration is that where any tract of land

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has been by Congress confirmed to any claimant, this court will not confirm the same land to any other claimant; that after the Government has ceased to be possessed of or interested in the title, this court is not to be made use of to investigate and express an opinion upon the validity of every claim which may be outstanding against the property emanating from Spanish or Mexican authority.

The third provision of the act of Congress to which attention is directed is found in section 8, and reads: "If in any case the title so claimed to be perfect shall be established and confirmed, such confirmation shall be for so much land only as such perfect title shall be found to cover, always excepting any part of such land that shall have been disposed of by the United States."

Under this provision it is clear that if any part of the land claimed in this case has been disposed of by the United States, such part must be excepted from the decree of confirmation. This proposition is not open to question. The only question which can be raised is as to what is meant by the expression "disposed of by the United States." It seems that this expression must be construed according to its ordinary and
148 usual acceptation. There is nothing in the act to justify the conclusion that it was used in any narrow or technical sense, or as having reference to any particular method of disposition. This clause of the act certainly has reference to excepting from the confirmation land the title to which has been disposed of by the United States. We can entertain no other conception of the United States disposing of land than as disposing of the title to the land. To dispose of the thing is to part with it. To dispose of land is to part with it, and to part with land is simply to part with the title to it. When a man parts with whatever title he may have to land, he has disposed of it to the full extent of his ability to do so. A man may part with his title to the land either by a sale and conveyance of it as of an absolute fee, or by a simple quit claim or release of any claim he may have to it. In either case the land is effectually disposed of as *afr* as he can do so. And so it is with the United States. It can dispose of its title to land either by a sale or grant, whereby it undertakes to confer upon the grantee and indefeasible estate in fee, or by a simple quit claim or release, and surrender of all its title and claim to the land. In either event the Government parts with its title, and the land is disposed of so far as the United States is concerned.

The language used in the clause of the statute under consideration comprehends both these methods of disposition. The effect of acts of Congress confirming Spanish and Mexican land claims has been passed upon in numerous cases by the Supreme Court. In the cases of Ryan vs. Carter (93 U. S., 78) and the Tameling Case (93 U. S., 644), and the Maxwell Grant Case (121 U. S., 325), the doctrine is established that a confirmation of one these grants by act of Congress has the same operation and effect in the way of passing title as a grant de novo made by act of Congress, and that a grant of land may be made by law, as well as by a patent pursuant to a law. In the Ryan Case
149 (93 U. S., page 82) it is said: "Repeated decisions of this court have declared that such a statute passes the title of the United States as effectually as if it contained in terms a grant de novo, and that a grant may be made by law as well as by patent pursuant to a law." This same language is reiterated in the Tameling Case (93 U. S., at

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page 663), and the same principle was applied in the Maxwell Grant Case.

From these decisions the inference is unavoidable that as a disposition of the land an act of Congress confirming Spanish land claims stands upon the same footing and is to be considered in the same light as an act making an independent grant de novo.

Now, if Congress had passed an act making in terms an out-and-out grant of this particular tract of land to the Indian of Pojoaque, we would be compelled to say that that particular tract of land had been disposed of by the United States. Under the logic of the decisions cited how can we say anything else as to the effect of the act of Congress confirming these several Indian pueblo claims?

The conclusion is clear that this case is precisely within the provision of section 8, above quoted.

It is contended that the construction above given to the act of Congress should not be adopted, for the reason that if the part of the land covered by the Indian titles is excepted from the decree of confirmation the plaintiffs will be deprived of the right to assert the superiority of their right to the land as against the Indians in the courts of ordinary jurisdiction, and therefore the necessity of protecting the rights of all parties claiming interests in the land compels the adoption of a different construction.

It is seen that the act of Congress confirming the lands to the Indian pueblos contained the provision "that this confirmation shall only
150 be construed as a relinquishment of all title and claim of the United States to any part of said lands, and shall not affect any adverse valid rights should such exist."

This reservation is not made in favor of such rights only as should be passed on and approved under authority of the United States, but is a reservation in favor of any valid right of property in the land confirmed which existed at the time of the treaty of cession.

Prior to the act of Congress confirming the lands to the Indians, no adverse rights to the lands could be asserted in courts of ordinary jurisdiction, although such rights exissed and were valid. The reason for this was that the land—the res—which was to be the subject of judicial action was within the exclusive jurisdiction of the political department of the Government of the United States. Being within that jurisdiction, the res was wholly withdrawn from the jurisdiction of the ordinary courts. The courts might have had jurisdiction of the parties to be affected, but not having jurisdiction of the res, no judgment could be given which would affect the status or title.

By the act of confirmation, however, the res passed out from the exclusive jurisdiction of the political department of the Government and within the jurisdiction of the courts. And the moment the land came within the jurisdiction of the courts, every right and interest in the land, of whatever nature and from what source so ever arising, could be asserted in the courts in appropriate proceedings.

In the cases of Hallet vs. Collins (10 Howard, 174) and Meader vs. Norton (11 Wall., 442) it is established that when a grant has been confirmed in the name of one person, and another has a better title to the land confirmed than the confirmee, such owner of the better title may assert his rights to the land in a court of equity and hold the confirmee

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as trustee of the legal title to his benefit and compel a conveyance.

151 The plaintiffs in this case claim, and are shown to have, a title which was complete and perfect at the time of the treaty of cession and which requires no confirmation. There would seem to be no doubt that if the plaintiffs' title is paramount and superior to that of the Indians to the lands in question, it can be asserted against the Indians in the courts of ordinary jurisdiction without any confirmation by this court. The decree in this case should show that the court finds the grant set up by plaintiff to be genuine, to have become complete and perfect, and entitled to confirmation; that a part of the land within the boundaries of the grant has been by an act of Congress confirmed to the Indian pueblos, and for that reason are excepted from the decree of confirmation. This is as far as this court can go under the plain language of the act of Congress creating it.

HENRY C. SLUSS,
Associate Justice.

SANTA FE, NEW MEXICO, *October 24th, 1895.*

I concur in the conclusion reached in the foregoing opinion, and in the reasoning by which that conclusion is reached, except that I do not concur in the reasoning as to the proper construction of the provision of section 8 of the act of Congress creating this court.

THOMAS C. FULLER,
Associate Justice.

152 And be it further remembered that t'ereafter, to wit, on the 9th day of November, A. D. 1895, a motion to vacate the decree of confirmation in said cause was filed in the office of the clerk, which said motion is in the words and figures following, to wit:

153 In the Court of Private Land Claims.

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL.
versus
THE UNITED STATES. } No. 112.

Now come the pueblo of Nambe and the pueblo of Pojoaque, by John L. Bullis, agent of the United States for the Pueblo Indians, and show to the court here that the lands claimed by said petitioner in the above-entitled cause, and which have been confirmed by the decree of this court to said petitioners, are almost entirely within the limits of the lands confirmed by act of Congress to said pueblos of Nambe and Pojoaque and patented to them by the United States.

The said pueblos further show to the court that while they were made parties defendant to said petition they were never served with process therein and had no opportunity to appear and make defense to the said claim of said petitioners.

The said pueblos therefore move the court to vacate the decree of confirmation heretofore entered in this cause by this court and to allow them an opportunity to be heard herein in opposition to the said claim.

THE PUEBLO OF POJOAQUE and
THE PUEBLO OF NAMBE.
By JOHN L. BULLIS,
Captain 24th Infantry, Acting Indian Agent.

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154 And afterwards, to wit, at a stated term of the Court of Private Land Claims, begun and held at Santa Fe on the third day of March, A. D. 1896, and on the second day of said term, the same being the third day of March, 1896, the following, among other proceedings, were had, to wit:

MARIA DE LA PAZ VALDEX DE CONWAY ET AL.
vs.
THE UNITED STATES ET AL.

In the above-entitled cause the motion of the Indians of the pueblos of Nambe and Pohuaque to vacate the de'ree of confirmation heretofore entered in this cause and to allow them an opportunity to be heard, was set for argument on Saturday, the fifteenth inst.

155 And afterwards, to wit, at a stated term of the Court of Private Land Claims, begun and held at Santa Fe on the ninth day of November, 1896, and on the nineteenth day of said term, the same being the second day of December, A. D. 1896, the following, among other proceedings, were had, to wit:

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL.
vs.
UNITED STATES ET AL.
"Cuyamungue grant."

The motion of the pueblos of Nambe and Pohuaque to vacate the decree of confirmation heretofore entered in the above-entitled cause, filed November ninth, 1895, now coming on to be heard and being submitted to the court, the court being now sufficiently advised in the premises, doth overrule and deny said motion.

It is therefore ordered by the court that the said motion of the petitioners to vacate the decree of confirmation in this cause be, and the same hereby is, denied.

156 And be it further remembered, that thereafter, to wit, on the sixth day of January, A. D. 1897, an appeal and allowance were filed in the office of the clerk, which said appeal and allowance are in the words and figures following, to wit:

157 *Appeal and allowance.*

UNITED STATES OF AMERICA, *ss:*

Court of Private Land Claims, Santa Fe district.

MARIA DE LA PAZ VALDEZ DE CONWAY ET AL., plaintiffs and appellees,
vs.
THE UNITED STATES, DEFENDANT AND APPELLANT.
No. 112. Cuyamungue grant.

The above-named defendant, the United States, considering itself aggrieved by the decree entered on the twenty-four day of October, 1895, in the above-entitled proceeding, doth hereby appeal from said decree to

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the Supreme Court of the United States, and it prays that this appeal be allowed, and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

The said defendant shows to the court here that the statement by the United States attorney to the Attorney-General required by sec. 9 of the act of Congress establishing this court, approved March 3, 1891, was not made in said cause within sixty days after the rendition of judgment therein, but was made on December 22, 1896.

MATT. G. REYNOLDS,
U. S. Attorney for Defendant and Appellant.

And now, to wit, on January 4th, 1897, it appearing to the satisfaction of the court that the statement required to be made by the U. S. attorney to the Attorney-General by sec. 9 of the act of Congress establishing this court was not made within sixty days after the rendition of the judgment therein, but was made on, to wit, the twenty-second day of December, 1896, it is ordered that an appeal be, and hereby is, now allowed as prayed for.

WILBUR F. STONE,
Associate Justice, Court of Private Land Claims.

158 And be it further remembered that thereafter, to wit, on the 22nd day of January, A. D. 1897, a citation was filed in the office of the clerk, which said citation is in the words and figures following, to wit:

159 *Citation on appeal to Supreme Court.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to Maria de la Paz Valdez de Conway and others, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, to wit: Sixty days from and after the date of this citation, pursuant to an appeal filed in the office of the clerk of the Court of Private Land Claims, wherein the United States is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this fourth day of January, in the year of our Lord one thousand eight hundred and ninety-seven.

WILBUR F. STONE,
Associate Justice, Court of Private Land Claims.

On this day of 189 , personally appeared before me the subscriber, and makes oath that he delivered a true copy of the above citation to .

Subscribed and sworn to before me this day of , 189 .

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I hereby acknowledge service of the foregoing citation for and on behalf of the plaintiffs and appellees this 8th day of January, 1897, but I do not waive any ground of objection to the time or validity of the said appeal.

JNO. H. KNAEBEL,
Attorney for Plaintiffs.

(Indorsed:) Citation filed Jan. 22, 1897. James H. Reeder, clerk. By Ireneo L. Chaves, dep'ty.

160 UNITED STATES OF AMERICA,
Territory of New Mexico, ss:

I, James H. Reeder, clerk of the Court of Private Land Claims, do hereby certify that the foregoing is a full, true, and correct transcript of all the papers filed and the proceedings had in said court in the case entitled Maria de la Paz Valdez de Conway et al. vs. United States, No. 112.

Given under my hand and the seal of said court, at Santa Fe, Territory of New Mexico, this 26th day of March, A. D. 1897.

JAMES H. REEDER, *Clerk.*
[SEAL.] By IRENEO L. CHAVES, *Deputy.*

(Indorsed on cover:) Case No. 16546. Term No. 343. The United States, appellant, vs. Maria de la Paz Valdez de Conway et al. Court of Private Land Claims. Filed March 31st, 1897. Supreme Court U. S. Clerk's office. Received Mar. 31, 1897.

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CHAVEZ *v.* UNITED STATES.

APPEAL FROM THE COURT OF PRIVATE LAND CLAIMS.

No. 14. Argued October 17, 18, 1899. — Decided December 22, 1899.

In Mexico, in 1831, a departmental assembly or territorial deputation had no power or authority to make a grant of lands; and the fact that the governor presided at a meeting of the territorial deputation at the time such a grant was made, makes no difference, as the power to make the grant was exclusively in the governor, and the territorial deputation had no jurisdiction in the matter.

THE statement of the case will be found in the opinion of the court.

Mr. Frank W. Clancy for appellant.

Mr. Matthew G. Reynolds for appellee. *Mr. Solicitor General* was on his brief.

MR. JUSTICE PECKHAM delivered the opinion of the court.

This is an appeal from a judgment of the Court of Private Land Claims refusing to confirm the title of the appellant to

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some 5000 acres of land in New Mexico, about one league from the Manzano grant. The title is evidenced by a grant by the territorial deputation of New Mexico, made in 1831, and the first question in the case relates to the authority of that body to make the grant.

It is also contended that if the territorial deputation did not have the power to make the grant, and that power rested with the governor of the department, his presence in the territorial deputation as its *ex officio* president when the grant was made, and, so far as the record shows, his not protesting but acquiescing in its action, was equivalent to and the same as a grant made by himself in his official character as governor.

It is further stated that by reason of the action of the governor in writing the letter dated December 22, 1831, and hereinafter set forth, that officer ratified and confirmed the grant, and in effect made it his own.

It appears from the record that on February 28, 1831, citizen Nerio Antonio Montoya petitioned the honorable corporation of Tome, and asked it that it would append to his petition its own report to the most excellent deputation, so that that body should grant him the land described in the petition. The corporation of Tome, on the 19th of March, 1831, granted the prayer of the petitioner, and adopted a resolution which provided that his petition should "go before the most excellent territorial deputation, which, as the authority competent, may accede to the donation of the land prayed for by the said petitioner without injuring the pastures and watering places for the passers-by." The resolution was accordingly forwarded to the territorial deputation, and that body on November 12, 1831, took action as follows:

"(Extract from record of proceedings of the territorial deputation, session of November 12, 1831.)

"The foregoing record having been read and approved, a petition of citizen Nerio Montoya, a resident of Valencia, in which he asks for the donation, for agricultural purposes, of a tract of vacant land in the Manzano within the limits of the Ojo de en Medio as far as the rancheria, was taken up and the

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report of the respectable corporation council of Tome, in which it is set forth that there is no objection to the concession of the said land, having been heard it was ordered that it be granted.

* * * * *

"The session was adjourned.

"SANTIAGO ABREU, *President.* (Rubric.)
"JUAN RAFAEL ORTIZ. (Rubric.)
"ANTO. JOSE MARTINEZ. (Rubric.)
"JOSE MANL. SALAZAR. (Rubric.)
"TEODOSIO QUINTANA. (Rubric.)
"RAMON ABREU, *Secretary.* (Rubric.)"

In accordance with this action, the following direction by the deputation, signed by its secretary, was given the alcalde of the proper jurisdiction:

"SANTA FE, *November* 12, 1831.

"The honorable the deputation of this territory, having received the report of the constitutional council of Tome, appended to this petition, has resolved in this day's session to grant the land prayed for by the petitioner, charging the alcalde of said jurisdiction to execute the document that will secure the grantee in the grant hereby made to him.

"ABREU, *Secretary.*"

The alcalde thereupon executed a document which, after reciting that, "In obedience to the decree of the most excellent deputation of this territory made under date of November 12 of the current year on the margin of the petition which, under date of February 28, the citizen Nerio Antonio Montoya, resident of this said jurisdiction, presented to this honorable council, and on which petition is recorded the report made by this council, in accordance with which report its excellency has deemed it proper to accede to the petition of Montoya, granting him full and formal possession of the tract he prayed for," etc., declared that "Montoya, whenever he may choose or think best to do so, may notify me to proceed with him to the locality to place him in possession of the property

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granted him, with all the customary formality," etc. This was dated December 7, 1831, and signed by the alcalde.

On December 12, in the same year, the same alcalde, "in compliance with the provision made by this most excellent deputation of this territory and the notification given me by the citizen Nerio Antonio Montoya," proceeded with Montoya to the tract of land granted him and placed him in possession thereof, the act being signed by the alcalde.

There was also put in evidence on the trial of the action in the court below, on the question of ratification, the following:

"Office of the Political Chief of New Mexico.

"By your official communication of the 20th instant, I am advised of your having executed the decree of the most excellent deputation granting to the citizen Nerio Antonio Montoya a tract of land.

"But in regard to the inquiry you make of me, as to how much your fee should be, I inform you that I am ignorant in the premises, and that you may, if you choose to do so, put the question to the assessor (asesor), who is the officer to whom it belongs, to advise the justices of first instance in such cases.

"God and Liberty. Santa Fé, December 22, 1831.

"JOSE ANTONIO CHAVEZ.

"To Alderman Miguel Olona."

Various mesne conveyances were put in evidence on the trial, showing the transfer to the appellant of whatever title Montoya had to the land described, and it was then admitted that the appellant herein has succeeded to all the rights of the original grantee, if any, in this case. Evidence of possession under this grant was also given.

The court below held that the departmental assembly or territorial deputation had no power or authority to make a grant of lands at the time the grant in this case was attempted to be made, and that the fact that the governor may have presided at the meeting at the time the action was taken made no difference, as the power to make the

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grant was exclusively in the governor, and the territorial deputation had no jurisdiction in the matter. The claim was, therefore, rejected.

We think that in thus deciding, the court below was right.

We refer to some of the cases which show the territorial deputation did not have the power to make a grant, but only the power to subsequently approve it.

In *United States* v. *Vallejo*, 1 Black, 541, it was held that the Mexican law of 1824 and the regulations of 1828 altered and repealed the Spanish system of disposing of public lands, and that the law and the regulations from the time of their passage were the only laws of Mexico on the subject of granting public lands in the territories. It was also held that the governor did not possess any power to make grants of public lands independently of that conferred by the act of 1824 and the regulations of 1828. Mr. Justice Nelson, who delivered the opinion of the court in that case, refers to the various sections of the law of 1824, and also to the regulations of November, 1828, for the purpose of showing that the governors of the territories were authorized to grant vacant lands within their respective territories with the object of cultivation or settlement, and that the grants made by them to individuals or families were not to be definitively valid without the previous consent of the departmental assembly, and when the grant petitioned for had been definitively made, a patent, signed by the governor, was to be issued, which was to serve as a title to the party. This case did not decide that the territorial deputation could not make a valid grant, because the grant was made by the governor, but the various extracts from the law and regulations indicate very plainly that the authority to initiate a grant of public lands existed in the governor alone and not in the assembly.

In *United States* v. *Vigil*, 13 Wall. 449, it was held that departmental assemblies (territorial deputations) had no power to make a grant.

In his argument, at the bar, counsel for this appellant contended that the territorial deputation had lawful power and

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authority to make the grant to Montoya, and in order to maintain that proposition stated that it was necessary to discuss the effect of the decision of this court in *United States* v. *Vigil*. He claimed that what was said as to the lack of power in the territorial deputation to make a grant was not necessary to the decision of the court in that case, and that such expressions as were therein used regarding the question would not, therefore, constitute a precedent now binding on this court.

In Vigil's case there was a petition to the departmental assembly, through the governor of New Mexico, asking for a grant of land which in fact amounted to over two million acres, the grantees binding themselves, if the grant were made, to construct two wells for the relief and aid of travellers, and to establish two factories for the use of the State, and to protect them from hostile invasion. The governor transmitted the petition to the assembly, but declined to recommend that favorable action should be taken upon it. The assembly, notwithstanding this refusal, granted the tract on January 10, 1846, for the purpose of constructing wells and cultivating the land, etc., and the question was as to the validity of this grant.

The opinion was delivered by Mr. Justice Davis, who stated that it had been repeatedly decided by this court that the only laws in force in the territories of Mexico, for the disposition of public lands, with the exception of those relating to missions and towns, were the act of the Mexican congress of 1824 and the regulations of 1828. In the course of his opinion he said:

"These regulations conferred on the governors of the territories, 'the political chiefs,' as they are called, the authority to grant vacant lands, and did not delegate it to the departmental assembly. It is true the grant was not complete until the approval of the assembly, and in this sense the assembly and governor acted concurrently, but the initiative must be taken by the governor. He was required to act in the first instance — to decide whether the petitioner was a fit person to receive the grant, and whether the land itself could be granted without prejudice to the public or individuals. In case the

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information was satisfactory on these points, he was authorized to make the grant, and at the proper time to lay it before the assembly, who were required to give or withhold their consent. They were in this respect an advisory body to the governor, and sustained the same relation to him that the Senate of the United States does to the President in the matter of appointments and treaties."

A subsequent portion of the opinion dealt with the case upon the assumption that the grant had been made by the governor, and even in that case it was said the grant would have been invalid, because it violated the fundamental rule on which the right of donation was placed by the law; that the essential element of colonization was wanting, and that the number of acres granted was enormously in excess of the maximum quantity grantable under the law. This in nowise affected the prior ground upon which the opinion was based, that the departmental assembly had no power to make the grant. That was the essential and material question directly involved in the case, while the second ground mentioned was based upon an assumption that, even if the governor had made the grant, it would still have been void for the reason stated. The court did not base its decision that the departmental assembly had no power to make the grant because of its enormous extent. It held that the assembly had no power to make any grant, no matter what its size. It is, as we think, a decision covering this case.

In *Hayes* v. *United States*, 170 U. S. 637, the grant was by the territorial deputation of New Mexico, and it was stated by Mr. Justice White, speaking for the court, that "it cannot be in reason held that a title to land derived from a territory which the territorial authorities did not own, over which they had no power of disposition, was regularly derived from either Spain or Mexico or a State of the Mexican nation."

No presumption that the territorial deputations had authority to make grants can arise from the fact that in some instances those bodies assumed to make them. The case in this respect bears no resemblance to *United States* v. *Percheman*, 7 Pet. 51, 96, or to *United States* v. *Clarke*, 8 Pet. 436, 447, 453. In those cases it was not denied that the governor had authority in

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some circumstances to make grants, and it was therefore held that a grant made by him was *prima facie* evidence that he had not exceeded his power in making it, and that he who denied it took upon himself the burden of showing that the officer by making the grant had transcended the power reposed in him. There is in the case before us no evidence that the territorial deputation had the power in any event to make grants other than the fact that in some instances it assumed to make them.

The cases heretofore decided in this court, and some of which have been above referred to, show that such fact is inadequate to prove the existence of the authority.

It is, however, urged that the record of the action of the territorial deputation in regard to this grant shows that the governor and *ex officio* president of the deputation was present when the deputation decided to make the grant as petitioned for, and that his being so present and attesting the action of the deputation was equivalent to the making of the grant himself as governor. We do not think so. He did not assume to make any grant whatever, and certainly none in his character of governor. It does not even appear beyond doubt that he was present when the deputation made the grant. His signature is perfectly consistent with a mere authentication of the previous action of that body.

The petition of Montoya was addressed primarily to the corporation of Tome, and he requested that corporation to send his petition, approved by it, to the deputation to make him a grant of the land described in his petition. Acting under that request, the corporation of Tome sent his petition to the "most excellent territorial deputation," and asked that body to accede to the donation of the land prayed for. In conformity to the petition, the territorial deputation itself made the grant. The fact that the governor, being *ex officio* a member of the deputation, signed as president of that body the record of the act of the deputation, is not the equivalent of a grant by him in his official character of governor, nor does such act bear any resemblance to a grant by him. No one on reading the record would get the idea that the gov-

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ernor was himself making the grant or that he thereby intended so to do. It does not even show that he was in favor of the grant as made by the deputation. His signing the record constituted nothing more than an authentication of the act of the deputation. It purported to be nothing else. He might have properly signed the record if in fact he had voted against the grant, and had been opposed to the action of the assembly. He might have signed the record as an authentication, and yet have been absent at the time of the action of the assembly. In any event, it was his signature as an *ex officio* member or presiding officer of the deputation, attesting or perhaps assenting to its action, and it was not his action as governor making a grant in that capacity. The signature by the secretary alone, to the instrument (above set forth, dated November 12, 1831) which recites the previous action of the deputation, and charges the alcalde of the jurisdiction to execute the document which will secure the grantee in the grant, is simply a direction to the alcalde, and has no materiality upon this branch of the case other than as confirming the view that the grant was solely that of the deputation.

We cannot hold that when the power was given under the laws of Mexico to the governor to make grants of lands, he in any manner exercised that power or performed an act equivalent to its exercise, by presiding *ex officio* at a meeting of the territorial deputation which made a grant of lands in conformity to a petition solely addressed to it, and by authenticating as president the action of the deputation in deciding that the grant should be made.

The two positions, president of the deputation and governor, are separate and distinct, and the action of a governor merely as president of the deputation, and of the nature above described, is not in any sense and does not purport to be his separate and independent action as governor, making a grant of lands pursuant to a petition addressed to him officially. As governor he might refuse the grant upon a petition addressed to himself, when as president of the deputation he might sign the record authenticating its action in regard to a petition

addressed solely to that body. And it is obvious from the wording of the record that the president of the deputation was not assuming to act as governor upon a petition addressed to himself, but only as the president of the deputation. It might have been that he acquiesced in the assumption by the deputation of the right to make the grant, but his act of signing the record cannot be tortured into a grant or as the equivalent of a grant by himself.

It is further urged that there has been what amounts to a grant by the governor by reason of his letter of December 22, 1831, signed by him and above set forth, thus, as is claimed, ratifying the grant of the deputation and making it his own.

The only evidence that the person who signed the letter was the governor at that time is the heading of the letter, "Office of the Political Chief of New Mexico." It will be also noted that the person signing it is not the same one who signed the record of November 12, 1831, as president of the deputation. But assuming that Chavez was governor in December, 1831, when he signed the letter, he therein simply acknowledged the receipt of the official communication of the alcalde, in which that officer reports that he had executed the decree "of the most excellent deputation, granting to the citizen Nerio Antonio Montoya a tract of land." In reply to the question as to how much the alcalde's fee should be, he answered, that he was ignorant of the premises, and advised the alcalde to put the question to the assessor, the officer to whom it belonged to advise the justices in the first instances in such cases.

Now what does the governor ratify by this letter? Nothing.

The contention in favor of the grant, based upon the letter, is, that assuming the governor had power to make the grant, it was his duty when he learned from the report of the alcalde that one had been made by the deputation, and that possession had been delivered under it, to protest against and to deny the power of the deputation to make such grant, and unless he did so, his silence was evidence of the fact that he not only approved the act of the deputation in making the grant, but that he approved it as his own, and that such

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approval was the same as if the governor had himself made the grant, and in substance and effect it was his grant.

This contention we think is not founded upon any legal principle, and is in itself unreasonable. The writer of the letter is not the same person who signed the record of the proceedings of the deputation. The report of the alcalde gave him the information which, it is true, he may have had before, that the deputation had assumed the power to grant the land. His protest as to the legality of such action would not have altered the fact that it had occurred, while on the other hand his silence might simply be construed as evidence of his unreadiness at that time to dispute, or possibly of his belief in the validity of the action of the deputation. Or his silence might have been simply the result of his approval of the act of the alcalde in obeying the commands of the deputation, while he thought it was not the proper occasion upon which to contest or deny the validity of the grant which the deputation had actually made. Many reasons for his silence might be suggested, but the claim that it equalled in law a positive grant by the governor is, as we think, untenable.

While such silence is entirely consistent with other views that might have been held by the governor, it certainly cannot properly be ascribed, as a legal inference from the facts stated, to his desire to make the grant himself, nor could it be said that his desire (if he had it) was the legal equivalent of an actual grant.

His knowledge that another body had assumed to make a grant is not equivalent to the making of the grant himself, and he was the person who alone had power to make it. There is nothing in the letter which aids the plaintiff herein.

Finally, it distinctly appears that the possession of the parties is insufficient in length of time to prove a valid title. In *United States* v. *Chaves*, 159 U. S. 452, the possession was under the claim of a grant made by the governor of New Mexico to the alleged grantees. The grant had been lost, but it had been seen and read by witnesses, and its existence had been proved by evidence sufficient, as was stated in the opin-

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ion, (page 460,) to warrant "the finding of the court below that the complainant's title was derived from the Republic of Mexico, and was complete and perfect at the date when the United States acquired sovereignty in the territory of New Mexico, within which the land was situated." We do not question the correctness of the remarks made by Mr. Justice Shiras in regard to evidence of possession and the presumptions which may under certain circumstances be drawn as to the existence of a grant.

We do not deny the right or the duty of a court to presume its existence in a proper case, in order to quiet a title and to give to long continued possession the quality of a rightful possession under a legal title. We recognized and enforced such rule in the case of *United States* v. *Chaves*, decided at this term, in which the question is involved. We simply say in this case that the possession was not of a duration long enough to justify any such inference.

There is no proof of any valid grant, but on the contrary the evidence offered by the plaintiff himself and upon which he bases the title that he asks the court to confirm, shows the existence of a grant from a body which had no legal power to make it, and which, therefore, conveyed no title whatever to its grantee, and the evidence is, as given by the plaintiff himself, that it was under this grant alone that possession of the lands was taken. We cannot presume (within the time involved in this case) that any other and valid grant was ever made. The possession of the plaintiff and of his grantors up to the time of the treaty of Guadalupe Hidalgo, in 1848, had not been long enough to presume a grant. *Crespin* v. *United States*, 168 U. S. 208; *Hayes* v. *United States*, 170 U. S. 637, 649, 653; *Hays* v. *The United States*, *ante*, 248. The possession subsequently existing, we cannot notice. Same authorities.

We think the judgment of the court below should be

Affirmed.

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